By Mrs. FEINSTEIN:

S. 848. A bill to designate a portion of the Otay Mountain region of California as wilderness.

## OTAY MOUNTAIN WILDERNESS ACT OF 1999

Mrs. FEINSTEIN. Mr. President, I rise today to introduce the Otay Mountain Wilderness Act of 1999. This bill would designate an 18,500 acre portion of the Otay Mountain region in Southern California as wilderness. The bill passed the House last week on a voice vote, with broad bi-partisan support.

Otay Mountain, which is located near the U.S.-Mexico border in eastern San Diego County, is one of California's most special wild places. The mountain is a unique ecosystem, home to 20 sensitive plant and animal species. The endangered quino checkerspot butterfly calls Otay Mountain home, and the only known stand of Tecate cypress, as well as the only known population of the Mexican flannel bush, also thrive on the mountain. For these reasons, the U.S. Bureau of Land Management first recommended Otay Mountain for wilderness designation in the 1980s.

In addition, Otay Mountain is key to San Diego County's habitat conservation planning efforts. The County has identified the region as a core reserve in the multi-species habitat conservation plan that it is currently developing.

Otay Mountain is scenic, rugged, and beautiful. The area is well worth preserving as wilderness for generations to come. This bill will ensure that San Diegans, and indeed all Americans, will be able to experience and enjoy Otay Mountain in all its unique splendor.

Unfortunately, in recent years Otay Mountain's sensitive habitat has been damaged by illegal immigration and narcotics activity in the area. The U.S. Bureau of Land Management has worked closely with the U.S. Border Patrol to bring these problems under control, and they have experienced great success. This legislation would specifically allow Border Patrol and firefighting activities to continue in the new wilderness area, so long as they remain in accordance with the 1964 Wilderness Act. This provision in the legislation is specific to Otay Mountain and will not apply to any other wilderness area.

I want to thank Congressman BRIAN BILBRAY for his leadership in introducing the Otay Mountain Wilderness Act and guiding it through the House of Representatives. I also want to thank Congressman FILNER, who has been a steadfast supporter of the legislation, along with the Clinton Administration. The California Departments of Fish and Game and Fire and Forestry Protection support the bill, as do the Endangered Habitats League and other environmental groups. Finally, the bill has strong support from the San Diego County Board of Supervisors and the San Diego Association of Governments.

Mr. President, I hope that the Senate will move expeditiously to approve the Otay Mountain Wilderness Act and send the bill to the President for signature.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 848

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Otay Mountain Wilderness Act of 1999''.

**SEC. 2. FINDINGS.**

Congress finds that—

(1) the public land in the Otay Mountain region of California is one of the last remaining pristine locations in western San Diego County, California;

(2) this rugged mountain adjacent to the United States-Mexico border is internationally known for having a diversity of unique and sensitive plants;

(3) this area plays a critical role in San Diego's multi-species conservation plan, a national model made for maintaining biodiversity;

(4) due to the proximity of the Otay Mountain region to the international border, this area is the focus of important law enforcement and border interdiction efforts necessary to curtail illegal immigration and protect the area's wilderness values; and

(5) the illegal immigration traffic, combined with the rugged topography, present unique fire management challenges for protecting lives and resources.

**SEC. 3. DEFINITIONS.**

In this Act:

(1) PUBLIC LAND.—The term ''public land'' has the meaning given the term ''public lands'' in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702).

(2) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(3) WILDERNESS AREA.—The term ''Wilderness Area'' means the Otay Mountain Wilderness designated by section 4.

**SEC. 4. DESIGNATION.**

(a) IN GENERAL.—In accordance with the Wilderness Act (16 U.S.C. 1131 et seq.), there is designated as wilderness and as a component of the National Wilderness Preservation System certain public land in the California Desert District of the Bureau of Land Management, California, comprising approximately 18,500 acres as generally depicted on a map entitled ''Otay Mountain Wilderness'' and dated May 7, 1998.

(b) OTAY MOUNTAIN WILDERNESS.—The area designated under subsection (a) shall be known as the Otay Mountain Wilderness.

**SEC. 5. MAP AND LEGAL DESCRIPTION.**

(a) IN GENERAL.—As soon as practicable after the date of enactment of this Act, a map and a legal description for the Wilderness Area shall be filed by the Secretary with—

(1) the Committee on Energy and Natural Resources of the Senate; and

(2) the Committee on Resources of the House of Representatives.

(b) FORCE AND EFFECT.—The map and legal description shall have the same force and effect as if included in this Act, except that the Secretary, as appropriate, may correct clerical and typographical errors in the map and legal description.

(c) AVAILABILITY.—The map and legal description for the Wilderness Area shall be on file and available for public inspection in the offices of the Director and California State Director of the Bureau of Land Management.

(d) UNITED STATES-MEXICO BORDER.—In carrying out this section, the Secretary shall ensure that the southern boundary of the Wilderness Area is—

(1) 100 feet north of the trail depicted on the map referred to in subsection (a); and

(2) not less than 100 feet from the United States-Mexico international border.

**SEC. 6. WILDERNESS REVIEW.**

All public land not designated as wilderness within the boundaries of the Southern Otay Mountain Wilderness Study Area (CA–060–029) and the Western Otay Mountain Wilderness Study Area (CA–060–028) managed by the Bureau of Land Management and reported to the Congress in 1991—

(1) have been adequately studied for wilderness designation under section 603 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1782); and

(2) shall no longer be subject to the requirements contained in section 603(c) of that Act pertaining to the management of wilderness study areas in a manner that does not impair the suitability of those areas for preservation as wilderness.

**SEC. 7. ADMINISTRATION OF WILDERNESS AREA.**

(a) IN GENERAL.—Subject to valid existing rights and to subsection (b), the Wilderness Area shall be administered by the Secretary in accordance with the Wilderness Act (16 U.S.C. 1131 et seq.), except that for the purposes of the Wilderness Area—

(1) any reference in that Act to the effective date of that Act shall be considered to be a reference to the effective date of this Act; and

(2) any reference in that Act to the Secretary of Agriculture shall be considered to be a reference to the Secretary of the Interior.

(b) BORDER ENFORCEMENT, DRUG INTERDICTION, AND WILDLAND FIRE PROTECTION.—Because of the proximity of the Wilderness Area to the United States-Mexico international border, drug interdiction, border operations, and wildland fire management operations are common management actions throughout the area encompassing the Wilderness Area. This Act recognizes the need to continue such management actions so long as such management actions are conducted in accordance with the Wilderness Act (16 U.S.C. 1131 et seq.) and are subject to such conditions as the Secretary considers appropriate.

**SEC. 8. FURTHER ACQUISITIONS.**

Any land within the boundaries of the Wilderness Area that is acquired by the United States after the date of enactment of this Act shall—

(1) become part of the Wilderness Area; and

(2) be managed in accordance with this Act and other laws applicable to wilderness areas.

**SEC. 9. NO BUFFER ZONES.**

(a) IN GENERAL.—The designation of the Wilderness Area by this Act shall not lead to the creation of protective perimeters or buffer zones outside the boundary of the Wilderness Area.

(b) NONWILDERNESS ACTIVITIES.—The fact that nonwilderness activities or uses can be seen or heard from areas within the Wilderness Area shall not, in and of itself, preclude nonwilderness activities or uses outside the boundary of the Wilderness Area.

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By Mr. BINGAMAN:

S. 849. A bill to amend the Public Health Service Act to provide grant programs for youth substance abuse prevention and treatment; to the Committee on Health, Education, Labor, and Pensions.

YOUTH SUBSTANCE ABUSE PREVENTION AND TREATMENT ACT

Mr. Bingaman. Mr. President, I rise today to introduce the Youth Substance Abuse Prevention and Treatment Act. This bill is designed to increase access to drug prevention and treatment services for our nation's youth. It also provides for critical training of health care professionals who work tirelessly with young people with drug problems.

Nationwide only 20% of the 648,000 youth with severe substance use or dependency receive treatment. The statistics tell the tale and it is an unacceptable story.

Heroin use has doubled among teenagers in the 1990's.

More than 50% of 12th graders have tried an illicit drug.

In senior high schools across the country, 25% of students use an illicit drug on a monthly basis, and by the 12th grade, more than three-fourths of students have used alcohol, and over 30 percent are binge drinkers (more than five drinks at a sitting).

By the time they are seniors, almost one in four teens are current marijuana users and 1 in 20 use every day and this number is on the rise.

Studies have also indicated that youth who have used marijuana and other drugs in the past year were more likely than non-users to report problem behaviors including running away from home, stealing, skipping school, selling drugs, drunkdriving, and considering suicide.

Over the past several months, I have had the opportunity to hear first hand about the drug problem in New Mexico and the barriers for providing services that confront health care professionals and families everyday.

Drug use seems to be more common among youth in New Mexico than nationally. In fact, most underage teens in New Mexico drink alcohol; over one-third of seventh grade students and over three-fourths of 12th grade student reported drinking alcohol. Eighteen percent of 8th graders in New Mexico used illegal drugs other than marijuana in the past year compared to 12% nationally. In my state, ninth graders' illicit drug use has been increasing. This trend is of great concern because we also know that the younger people begin to use drugs or alcohol, the greater the chance they will continue to use drugs as adults.

With drug and alcohol use come other problem behaviors, violence, property damage, and threatening behavior; and in New Mexico these behaviors occur at a greater frequency than the national rates. In fact, nationally, the majority of teens enter substance abuse treatment only after they have had contact with juvenile justice authorities.

There is another significant problem confronting our nation. Illicit drug use among Native American youth is very high. According to Bureau of Indian Affairs officials, alcohol-related automobile accidents are the leading cause of death among Native American youth. We must address this issue.

The Youth Substance Abuse Prevention and Treatment Act provides funds for:

School-based community after-school prevention programs; schools and health providers working hand-in-hand with students and families to assure early identification and referral for at-risk students.

This bill also provides funding for youth treatment and encourages the use of community-based wrap around services.

This measure also includes special provisions for youth who live in rural areas as well as for Native Americans. These two youth populations are particularly suffering from a serious lack of prevention and treatment services.

The Director of the National Institute of Drug Abuse, Dr. Alan Leschner has stated that addiction is a treatable disease. While there have been advances in the prevention and treatment of substance abuse, dissemination of this valuable and potentially life-saving information is not consistently getting out to grassroots health care providers. That is why this legislation also assists healthcare professionals in accessing the latest information on emerging drug threats and the most recent advances in prevention and treatment techniques.

I am especially concerned with rural and remote areas where health care professionals may have to travel hours to attend a conference, many times on their limited time off.

The evidence in support of prevention and treatment is overwhelming; both in social and economic terms. Several studies have demonstrated that for every dollar spent on drug treatment the community gets back anywhere from six to seven dollars in reduced crime, and other lowered social costs. For youth especially, we see improved school attendance, better grades, and a reduction in violent and other anti-social behaviors.

There is one other benefit that is derived from adequately treating young people; when we help these young people, they are healthier and happier. We cannot forget the personal and family tragedy associated when youth are involved with drugs.

I recognize that this bill does not provide the entire solution, but it is a necessary step in addressing this national problem. I am committed to solving the problem of inadequate access to drug prevention and treatment services for all young people. I welcome my colleagues to work with me to ensure that all American youth who need access to these services, have the opportunity to pursue their dreams and when they stumble, we are there as a community to help. That is what this bill is all about and I ask my colleagues for their support.

Mr. President, I ask unanimous consent to have the text of the Youth Substance Abuse Prevention and Treatment Act printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 849

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SEC. 1. SHORT TITLE.**

This Act may be cited as the ''Youth Substance Abuse Prevention and Treatment Act''.

**SEC. 2. GRANT PROGRAMS.**

Title V of the Public Health Service Act (42 U.S.C. 290aa et seq.) is amended by adding at the end the following:

**''PART G—COMPETITIVE GRANT PROGRAMS FOR YOUTH SUBSTANCE ABUSE PREVENTION AND TREATMENT**

**''SEC. 581. GRANTS TO CONSORTIA.**

''(a) IN GENERAL.—The Secretary shall award grants on a competitive basis to eligible consortia to enable such consortia to establish the programs described in subsection (c).

''(b) PRIORITY.—In awarding grants under subsection (a), the Secretary shall give priority to applications from eligible consortia that provide services in rural areas or for Native Americans.

''(c) USE OF FUNDS.—An eligible consortium receiving amounts under subsection (a) shall use such amounts to establish school-based substance abuse prevention and student assistance programs for youth, including after school programs, to provide services that address youth substance abuse, including services that—

''(1) identify youth at risk for substance abuse;

''(2) refer any youth at risk for substance abuse for substance abuse treatment;

''(3) provide effective primary prevention programing;

''(4) target underserved areas, such as rural areas; and

''(5) target populations, such as Native Americans, that are underserved.

''(d) APPLICATION.—An eligible consortium that desires a grant under subsection (a) shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

''(e) REPORT.—Not later than 1 year after the date of enactment of this section and annually thereafter, an eligible consortium receiving a grant under subsection (a) shall submit to the Secretary a report describing the programs carried out pursuant to this section.

''(f) DEFINITIONS.—In this section:

''(1) ELIGIBLE CONSORTIUM.—The term 'eligible consortium' means an entity composed of a local educational agency and community-based substance abuse prevention providers and student assistance providers in which the agency and providers maintain equal responsibility in providing the services described in subsection (c).

''(2) LOCAL EDUCATIONAL AGENCY.—The term 'local educational agency' has the meaning given such term in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

''(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, $15,000,000 for each of fiscal years 2000 through 2004.

**''SEC. 582. GRANTS TO TREATMENT FACILITIES.**

''(a) IN GENERAL.—The Secretary shall award grants on a competitive basis to inpatient and outpatient treatment facilities that provide the substance abuse treatment services described in subsection (d).

''(b) ELIGIBLE APPLICANT.—To be eligible to receive a grant under subsection (a), a treatment facility must provide or propose to provide alcohol or drug treatment services for individuals under the age of 22 years.

''(c) PRIORITY.—In awarding grants under subsection (a), the Secretary shall give priority to applications from treatment facilities that provide treatment services in rural areas, for Native Americans, or for underserved populations.

''(d) USE OF FUNDS.—A treatment facility receiving amounts under subsection (a) shall use such amounts to provide substance abuse treatment services for youth, including community-based aftercare services that provide treatment for the period of time following an individual's discharge from a drug treatment center.

''(e) APPLICATION.—A treatment facility that desires a grant under subsection (a) shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

''(f) REPORT.—Not later than 1 year after the date of enactment of this section and annually thereafter, a treatment facility receiving a grant under subsection (a) shall submit to the Secretary a report describing the services provided pursuant to this section.

''(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, $15,000,000 for each of the fiscal years 2000 through 2004.

**''SEC. 583. GRANTS TO SUBSTANCE ABUSE PREVENTION AND TREATMENT PROVIDERS.**

''(a) IN GENERAL.—The Secretary shall award grants on a competitive basis to State and local substance abuse prevention and treatment providers to enable such providers to offer training to provide prevention and treatment services for youth.

''(b) PRIORITY.—In awarding grants under subsection (a), the Secretary shall give priority to applications from areas in which—

''(1) there is a demonstrated high rate of substance abuse by youth; and

''(2) the population is identified as underserved or the prevention and treatment providers in the area use distance learning.

''(c) APPLICATION.—A treatment provider that desires a grant under subsection (a) shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

''(d) REPORT.—Not later than 1 year after the date of enactment of this section and annually thereafter, a treatment provider receiving a grant under subsection (a) shall submit to the Secretary a report describing the services provided pursuant to this section.

''(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, $2,000,000 for each of the fiscal years 2000 through 2004.

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By Mrs. BOXER:

S. 850. A bill to make schools safer by waiving the local matching requirement under the Community Policing program for the placement of law enforcement officers in local schools; to the Committee on the Judiciary.

COPS IN SCHOOLS ACT OF 1999

Mrs. BOXER. Mr. President, today we are faced again with an tragedy in one of America's schools. There are many things that schools are and could be doing to prevent violence—and many ways the federal government could help. But, today, I am going to speak to just one of them.

Under the COPS program—President Clinton's initiative to put 100,000 new police officers on our streets—local governments are required to provide 25 percent of the funding. But, the Attorney General has the authority to waive the local matching requirement for any reason.

Last summer, I called on the Justice Department to establish a blanket waiver policy for any local community that wanted to place a law enforcement officer in a public school. To its credit, the Department has done so in some cases, and it says it will continue to do so on a case-by-case basis.

But, Mr. President, that is not good enough. We need to tell our local communities that the local match will be waived, period, for any new police officer hired to be in the schools. I have again called on the Administration to establish such a waiver policy—and to tell our local communities about it. Just in case, however, I am also introducing legislation today—the COPS in Schools Act—to require a waiver.

I am not advocating putting police officers in the schools just to patrol. Nor do I want people to think our schools are or should be jails or combat zones. Police officers in schools are important to work with school staff to develop anti-crime policies on campus, to implement procedures to ensure a safer school environment, and to reassure parents that a police officer is there to deal with those students that might cause problems.

Children in public schools have a right to be safe, and it is our obligation to ensure their safety. It is as fundamental as the right to a free public education. Let's not wait for yet another tragedy to get adequate protection for America's school children. My bill is a small step, and it is not the only step we need to take. But, it can help to reduce the chance of more bloodshed at yet another school.

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By Mr. CHAFEE (for himself and Mr. MOYNIHAN)

S. 851. A bill to allow Federal employees to take advantage of the transportation fringe benefit provisions of the Internal Revenue Code that are available to private sector employees; to the Committee on Governmental Affairs.

FEDERAL EMPLOYEE FLEXIBILITY ACT OF 1999

Mr. CHAFEE. Mr. President, I rise today to introduce, with Senator MOYNIHAN, the Federal Employee Flexibility Act of 1999, a bill that would provide flexibility and choices for Federal employees.

This flexibility was provided to private sector employees in the Taxpayer Relief Act of 1997 and the Transportation Equity Act for the 21st Century (TEA 21). We believe that these provisions provide to employers and employees important new flexibility which should reduce single occupant vehicle trips from our highways and therefore contribute to reduced congestion, a cleaner environment, and increased energy conservation.

The Taxpayer Relief Act of 1997 and the Transportation Equity Act for the 21st Century include significant changes to the way the Internal Revenue Code treats employer-provided transportation fringe benefits. Unfortunately, we have become aware that personnel compensation law for Federal employees restricts implementation of this new flexibility.

Prior to enactment of these two bills, the Federal tax code provided that employer-provided parking is not subject to Federal taxation, up to $170 per month. However, this tax exemption was lost for all employees if the parking was offered in lieu of compensation for just one employee. In other words, if an employer gave just one employee a choice between parking and some other benefit (such as a transit pass, or increased salary), the parking of all other employees in the company became taxable. It goes without saying that no employers jeopardized a tax benefit for the overwhelming majority of their employees to provide flexibility to others. In effect, the tax code prohibited employers from offering their employees a choice. Parking was a take-it or leave-it benefit.

The changes in these two laws make it possible for employers to offer their employees more choices by eliminating the take-it or leave-it restriction in the Federal tax code. Employees whose only transportation benefit is parking can now instead accept a salary enhancement, and find other means to get to work such as car pooling, van pooling, biking, walking, or taking transit.

Unfortunately, Federal employees will not be able to benefit from the increased flexibility available to private sector employees, unless Federal compensation law is modified. Current Federal law provides that a Federal employee may not receive additional pay unless specifically authorized by law. Therefore, a Federal employee could not ''cash out'' a parking space at work, and instead receive cash or other benefits.

To address this limitation for transit passes and similar benefits, the ''Federal Employees Clean Air Incentives Act'' enacted in 1993 allows the Federal government to provide transit benefits, bicycle services, and non-monetary incentives to employees. However, when this legislation was enacted, the Federal tax code prohibited the so-called ''cash out'' option discussed above, and therefore was not included in the list of transportation-related exemptions in that statute.

The short and simple bill we introduce today would add ''taxable cash reimbursement for the value of an employer-provided parking space'' to the list of benefits that can be received by Federal employees.

This bill is very similar to a bill Senator MOYNIHAN and I sponsored in the 105th Congress, S. 2575 and H.R. 4777 sponsored in the House by Representatives NORTON, NADLER, MORELLA, and

MORAN. These same House colleagues are today introducing a bill identical to the bill we introduce today.

Let me assure my colleagues and Federal employees that this bill would not require that Federal employees lose their parking spaces, as may be feared when there is discussion of Federal employee parking spaces. The bill simply provides Federal employees the same flexibility that is available to private sector employees. Employees who want to retain their tax-free parking space would be free to do so.

We think it is vital that the Federal government show leadership on the application of new and innovative ways to solve our transportation and environmental problems. I hope that my colleagues will join me in supporting this bill and that we can act swiftly on it in this session of Congress.

Mr. President, I ask that the text of the bill be inserted in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 851

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. CASH PAYMENT TO FEDERAL EMPLOYEES FOR PARKING SPACES.**

(a) SHORT TITLE.—This Act may be cited as the ''Federal Employee Flexibility Act of 1999''.

(b) IN GENERAL.—Section 7905 of title 5, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (2)(C) by inserting ''and'' after the semicolon;

(B) in paragraph (3) by striking ''; and'' and inserting a period; and

(C) by striking paragraph (4); and

(2) in subsection (b)(2)—

(A) by amending subparagraph (A) to read as follows:

''(A) a qualified transportation fringe as defined in section 132(f)(1) of the Internal Revenue Code of 1986;'';

(B) in subparagraph (B) by striking ''and'' after the semicolon;

(C) in subparagraph (C) by striking the period and inserting a semicolon and ''and''; and

(D) by adding at the end the following:

''(D) taxable cash payment to an employee in lieu of an agency-provided parking space.''.

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By Mrs. FEINSTEIN:

S. 852. A bill to award grants for school construction; to the Committee on Health, Education, Labor, and Pensions.

EXCELLENCE IN EDUCATION ACT OF 1999

Mrs. FEINSTEIN. Mr. President, today I am introducing a bill to provide funds to build new schools. It is the Excellence in Education Act of 1999.

The purpose of this bill is to (1) reduce the size of schools and (2) reduce the size of classes. The bill would create a 50–50 matching grant program to build new schools to meet the following size requirements:

School size requirement:

for kindergarten through 5th grade, not more than 500 students;

for grades 6 through 8, not more than 750 students; and

for grades 9 through 12, not more than 1,500 students.

Class size requirement:

for kindergarten through grade 6, not more than 20 students per teacher;

for grades 7 through 12, not more than 28 students per teacher.

The bill authorizes $5 billion each year for the next five years for the U.S. Department of Education to award grants to local school districts. School districts would have to match federal funds with an equal amount. In addition to making the above reductions, school districts would be required to terminate social promotion, provide remedial education and require that students be subject to state achievement standards in the core academic curriculum.

Why do we need this bill?

First, many of our schools are just too big, especially in urban areas. The ''shopping mall'' high school is all too common. ''It's not unusual to find high schools of 2,000, 3,000, or even 4,000 students and junior high schools of 1,500 or more, especially in urban school systems,'' writes Thomas Toch in the Washington Post. In these monstrous schools, the principal is just a disembodied voice over the public address system.

Equally serious is the fact that our classes are too big. Even though we have begun to reduce class sizes in my state, California still has some of the largest class sizes in the U.S. The National Center for Education Statistics says California's classrooms have the highest pupil-teacher ratios in the nation.

This bill will provide a new funding source for school districts or states to match to build new schools and reduce both school size and class size. There is no good estimate of how many schools would be needed to reduce schools and classes to the levels specified in the amendment, but we all know that there are many large schools and large classes in public education today.

The U.S. Department of Education estimates that we need to build 6,000 new schools just to meet enrollment growth projections. This estimate does not take into account the need to cut class and school sizes. The needs are no doubt huge.

My state that has some of the largest schools in the country. Our students are crammed into every available space, even in cafeterias and libraries. Today, 20 percent of our students are in portable classrooms. There were 63,000 relocatable classrooms in use in 1998. Here are some examples:

High Schools:

Roosevelt High School (Los Angeles), 4,902;

Huntington Park High School, 4,275;

Roosevelt High School, Fresno, 3,692;

Berkeley High School, Berkeley, 3,025; and

Mt. Carmel High School, San Diego, 3,279.

Intermediate Schools:

Clark Intermediate School, Clovis, 2,744 students;

Gianni Middle School, San Francisco, 1,336; and

O'Farrell Middle School, San Diego, 1,441.

Elementary Schools:

Rosa Parks Elementary School, San Diego, 1,423;

Winchell Elementary School Fresno, 1,392;

Zamorano Elementary School, San Diego, 1,424; and

Kerman/Floyd Elementary School, Fresno, 1,000.

California also has some of the largest classes sizes in the nation. In 1996–1997, California had the second highest teacher-pupil ratio in the nation, at 22.8 students per teacher. Fortunately since 1996, the state has significantly cut class sizes in grades K–3, but 15 percent or 300,000 of our K–3 students have not benefitted from this reform. And students above grade 3 have not been touched.

Here are some examples of classes in my state:

Fourth grade, statewide, 29 students; sixth grade, statewide, 29.5 students.

National City Middle School San Diego, English and math, 34 to 36 students.

Berryessa School District in San Jose—fourth grade, 32 students; eighth grade, 31 students.

Long Beach and El Cajon School Districts, tenth grade English, 35 students.

Santa Rosa School District—fourth grade, 32 students.

San Diego City Schools, tenth grade biology, 38 students.

Hoover Elementary and Knox Elementary in E. San Diego Elementary, grades 5 and 6, 31 to 33 students.

Hoover High School 10th grade Algebra, 39 students.

To add to the problem, California will have a school enrollment rate between 1997 and 2007 of 15.7 percent, triple the national rate of 4.1 percent. We will have the largest enrollment increase of all states during the next ten years. By 2007, our enrollment will have increased by 35.3 percent. To put it another way, California needs to build seven new classrooms a day at 25 students per class just to keep up with the surge in student enrollment. The California Department of Education says that we need to add about 327 schools over the next three years, just to keep pace with the projected growth.

The cost of building a high school in California is almost twice the national cost. The U.S. average is $15 million; in California, it is $27 million. In California, our costs are higher than other states in part because our schools must be built to withstand earthquakes, floods, El Nino and a myriad of other natural disasters. California's state earthquake building standards add 3 to 4 percent to construction costs. Here's what it costs to build a schools in California: an elementary school (K–6), $5.2 million; a middle school (7–8), $12.0 million; a high school (9–12), $27.0 million.

Studies show that student achievement improves when school and class sizes are reduced.

The American Education Research Association says that the ideal high school size is between 600 and 900 students. Study after study shows that small schools have more learning, fewer discipline problems, lower dropout rates, higher levels of student participating, higher graduation rates (The School Administrator, October 1997). The nation's school administrators are calling for more personalized schools.

California's education reforms relied on a Tennessee study called Project STAR, in which 6,500 kindergartners were put in 330 classes of different sizes. The students stayed in small classes for four years and then returned to larger ones in the fourth grade. The test scores and behavior of students in the small classes were better than those of children in the larger classes. A similar 1997 study by Rand found that smaller classes benefit students from low-income families the most.

Take the example of Sandy Sutton, a teacher in Los Angeles's Hancock Park Elementary School. She used to have 32 students in her second grade class. In the fall of 1997, she had 20. She says she can spend more time on individualized reading instruction with each student. She can now more readily draw out shy children and more easily identify slow readers early in the school year.

The November 25, 1997, Sacramento Bee reported that when teachers in the San Juan Unified School Districts started spending more time with students, test scores rose and discipline problems and suspensions dropped. A San Juan teacher, Ralphene Lee, said, ''This is the most wonderful thing that has happened in education in my lifetime.''

A San Diego initiative to bring down class sizes found that smaller classes mean better classroom management; more individual instruction; more contact with parents; more time for team teaching; more diverse instructional methods; and a higher morale.

Teachers say that students in smaller classes pay better attention, ask more questions and have fewer discipline problems. Smaller schools and smaller classes make a difference, it is clear.

My state needs a total of $34 billion to build schools from 1998 to 2008. Of this, $26 billion is needed to modernize and repair existing schools and $8 billion is needed to build schools to meet enrollment growth. In November 1998, California voters approved state bonds providing $6.5 billion for school construction.

California needs to build 7 new classrooms a day at 25 students per class between now and 2001 just to keep up with the growth in student population. By 2007, California will need 22,000 new classrooms. California needs to add about 327 schools over the next three years just to keep pace with the projected growth.

Other bills in the Congress that I am supporting provide tax incentives for holders of school bonds to modernize old schools and we have many old schools. One third of the nation's 110,000 schools were built before World War II and only about one of 10 schools was built since 1980. More than one-third of the nation's existing schools are currently over 50 or more years old and need to be repaired or replaced. The General Accounting Office has said that nationally we need over $112 billion for construction and repairs to bring schools up to date.

Big schools and big classes place a heavy burden on teachers and students. They can be a stressful learning environment.

The American public supports increased federal funding for school construction. The Rebuild American Coalition last month announced that 82 percent of Americans favor federal spending for school construction, up from 74 percent in a 1998 National Education Association poll.

Every parent knows the importance of a small class where the teacher can give individualized attention to a student. Every parent knows the importance of the sense of a school community that can come with a small school.

I hope my colleagues will join me today in passing this important education reform.

Mr. President, I ask unanimous consent that the text of the bill and a summary be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 852

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Excellence in Education Act of 1999''.

**SEC. 2. DEFINITIONS**

In this Act:

(1) CORE CURRICULUM.—The term ''core curriculum'' means curriculum in subjects such as reading and writing, language arts, mathematics, social sciences (including history), and science.

(2) ELEMENTARY SCHOOL; LOCAL EDUCATIONAL AGENCY; SECONDARY SCHOOL; SECRETARY.—The terms ''elementary school'', ''local educational agency'', ''secondary school'' and ''Secretary'' have the meanings given the terms in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

(3) PRACTICE OF SOCIAL PROMOTION.—The term ''practice of social promotion'' means a formal or informal practice of promoting a student from the grade for which the determination is made to the next grade when the student fails to meet State achievement standards in the core academic curriculum, unless the practice is consistent with the student's individualized education program under section 614(d) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)).

(4) CONSTRUCTION.—

(A) IN GENERAL.—Subject to subparagraph (B), the term ''construction'' means—

(i) preparation of drawings and specifications for school facilities;

(ii) building new school facilities, or acquiring, remodeling, demolishing, renovating, improving, or repairing facilities to establish new school facilities; and

(iii) inspection and supervision of the construction of new school facilities.

(B) RULE.—An activity described in subparagraph (A) shall be considered to be construction only if the labor standards described in section 439 of the General Education Provisions Act (20 U.S.C. 1232b) are applied with respect to such activity.

(5) SCHOOL FACILITY.—The term ''school facility'' means a public structure suitable for use as a classroom, laboratory, library, media center, or related facility the primary purpose of which is the instruction of public elementary school or secondary school students. The term does not include an athletic stadium or any other structure or facility intended primarily for athletic exhibitions, contests, or games for which admission is charged to the general public.

**SEC. 3. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated to carry out this Act $5,000,000,000 for each of the fiscal years 2000 through 2004.

**SEC. 4. PROGRAM AUTHORIZED.**

The Secretary is authorized to award grants to local educational agencies to enable the local educational agencies to carry out the construction of new public elementary school and secondary school facilities.

**SEC. 5. CONDITIONS FOR RECEIVING FUNDS.**

In order to receive funds under this Act a local educational agency shall meet the following requirements:

(1) Reduce class and school sizes for public schools served by the local educational agency as follows:

(A) Limit class size to an average student-to-teacher ratio of 20 to 1, in classes serving kindergarten through grade 6 students, in the schools served by the agency.

(B) Limit class size to an average student-to-teacher ratio of 28 to 1, in classes serving grade 7 through grade 12 students, in the schools served by the agency.

(C) Limit the size of public elementary schools and secondary schools served by the agency to—

(i) not more than 500 students in the case of a school serving kindergarten through grade 5 students;

(ii) not more than 750 students in the case of a school serving grade 6 through grade 8 students; and

(iii) not more than 1,500 students in the case of a school serving grade 9 through grade 12 students.

(2) Terminate the practice of social promotion in the public schools served by the agency.

(3) Require that students be subject to State achievement standards in the core curriculum at key transition points, to be determined by the State, for all kindergarten through grade 12 students.

(4) Use tests and other indicators, such as grades and teacher evaluations, to assess student performance in meeting the State achievement standards, which tests shall be valid for the purpose of such assessment.

(5) Provide remedial education for students who fail to meet the State achievement standards, including tutoring, mentoring, summer programs, before-school programs, and after-school programs.

(6) Provide matching funds, with respect to the cost to be incurred in carrying out the activities for which the grant is awarded, from non-Federal sources in an amount equal to the Federal funds provided under the grant.

**SEC. 6. APPLICATIONS.**

(a) IN GENERAL.—Each local educational agency desiring to receive a grant under this

Act shall submit an application to the Secretary at such time and in such manner as the Secretary may require.

(b) CONTENTS.—Each application shall contain—

(1) an assurance that the grant funds will be used in accordance with this Act;

(2) a brief description of the construction to be conducted;

(3) a cost estimate of the activities to be conducted; and

(4) a description of available non-Federal matching funds.

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SUMMARY OF THE EXCELLENCE IN EDUCATION ACT OF 1999

Funds authorized, purpose: Authorizes $20 billion over 5 years ($5 billion each year) for the U.S. Department of Education to award grants to local education agencies to construct new school facilities from fiscal year 2000 to 2004.

Eligibility: Local education agencies as defined in 14101 of the Elementary and Secondary Education Act of 1965 (public schools).

Use of funds: Local education agencies are authorized to use funds to construct new school facilities.

Conditions for receiving funds: As a condition of receiving funds, local education agencies are required to—

Reduce school and class sizes as follows:

Limit class size to—

In the elementary grades to an average student-teacher ratio of 20 to one.

In grades 7 through 12 to an average student-teacher ratio of 28 to one.

Limit school size to—

Elementary schools (K–5): no more than 500 students.

Middle schools (6–8): no more than 750 students.

High schools (9–12): no more than 1,500 students.

Terminate the practice of social promotion;

Require that students be subject to state academic achievement standards, to be determined by the states, for all K–12 students in the core curriculum, defined as subjects such as reading and writing, language arts, mathematics, social sciences (including history); and science;

Test student achievement in meeting achievement standards periodically for advancement to the next grade, in at least three grades (such as the 4th, 8th and 12th grades), distributed evenly over the course of a student's education;

Provide remedial education for students who fail to meet academic achievement standards, including tutoring, mentoring, summer, before-school and after-school programs; and

Provide matching funds from non-Federal sources in an amount equal to the Federal funds provided under the grant.

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By Mrs. FEINSTEIN:

S. 853. A bill to assist local educational agencies to help all students achieve State achievement standards, to end the practice of social promotion, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

STUDENT ACHIEVEMENT ACT OF 1999

Mrs. FEINSTEIN. Mr. President, today I am introducing legislation to end the practice of social promotion in our public schools and to provide remedial education to help students meet academic achievement standards. The Student Achievement Act of 1999 authorizes $500 million for five years for local school districts to provide extended learning time so that K–12 students can achieve.

Social promotion is the formal or informal practice of promoting a student from grade to grade even when the student fails to achieve a level of achievement and proficiency in the core curriculum.

To receive funds, schools would have to:

Adopt a policy prohibiting social promotion;

Require that students be subject to academic achievement standards in the core curriculum, defined as subjects such as reading, writing, language arts, mathematics, social sciences and science;

Test student achievement in meeting standards at certain benchmarks, to be determined by the states;

Provide remedial education; and

Have substantial numbers of low-performing students.

I am introducing this bill because I believe that the linchpin to educational reform is the elimination of the path of least resistance whereby students who are failing are simply promoted to the next grade in hopes that they will learn. The product of this practice of simply promoting youngsters when they are failing to adequately learn has produced a generation of young people who are below standard and high school graduates that cannot read or write, count change in their pockets or fill out an employment application. It is that bad.

And my state is just about the worst. There's a steady stream of bad news. On March 5, we learned, yet again that California ranks second to last among 39 states in fourth-grade reading skills. Eighty percent of my state's fourth graders are not proficient readers. For eighth graders, California is 33rd out of 36 states and only 22 percent of California's eighth graders are proficient readers.

On March 24, the San Francisco Chronicle reported that the state received a grade of D+ from the American Electronics Association for the quality and availability of an educated workforce. This conclusion is in the state that is the home of Silicon Valley, the premier high-tech area of the country, in a state that received an A for electronic commerce and is number one in high tech employment. But California does not have a school system that trains students well enough to work in the high-paying, skilled jobs available.

These numbers are a stunning indictment of a failing system.

It is time to end social promotion, a practice which misleads our students, their parents and the public. As long as social promotion exists and is widespread, youth who cannot read or write and who won't be able to find jobs in the future will continue to graduate from high school.

I agree with the conclusion of the September 1997 study conducted by the American Federation of Teachers:

''Social promotion is an insidious practice that hides school failure and creates problems for everybody—for kids, who are deluded into thinking they have learned the skills to be successful or get the message that achievement doesn't count; for teachers who must face students who know that teachers wield no credible authority to demand hard work; for the business community and colleges that must spend millions of dollars on remediation, and for society that must deal with a growing proportion of uneducated citizens, unprepared to contribute productively to the economic and civic life of the nation.''

There is no hard data on the extent of social promotion in our public schools, but most authorities, in the schools and out, know that it is happening—and in fact, in some districts it is standard operating procedure.

The September AFT study surveyed 85 of the nation's 820 largest school districts in 32 states, representing one-third of the nation's public school enrollment, about their promotion policies.

Saying that social promotion is ''rampant,'' AFT leaders found that school districts' criteria for passing and retaining students is vague. Only 17 states have standards in the four core disciplines (English, math, social studies and science) that are well grounded in content and that are clear enough to be used.

A January 14, 1998 Los Angeles Times article reported that four in 10 teachers said that their schools automatically promote students when they reach the maximum age for their grade level.

None of the districts surveyed by AFT have an explicit policy of social promotion, but almost every district has an implicit practice of social promotion. Almost all districts view holding students back as a policy of last resort and many put explicit limits on retaining students. Districts have loose and vague criteria for moving a student from one grade to the next. This approach, concludes AFT, is implicit approval of social promotion.

Last fall, thankfully, former California Governor Pete Wilson signed into law a bill to end social promotion. In July 1998, I wrote some of California's school districts and asked about their policy on social promotion. Here are some of the reports I got back:

Some school districts did not have specific policies in place regarding social promotion. Exceptions to normal progression from one grade to another may be made when it is ''in the best interest of the student.'' Teachers may provide recommendations but final decisions on retention are made by the parent of the student.

In other cases, school districts required students to earn 220 credits to receive a high school diploma so that the district feels that ''social promotion is not an issue.''

One school district believes that ''it is seldom desirable for a student to be retained by reason of achievement, maturity or attendance because research has shown that retention is likely to

have strong negative effects.'' Retention is therefore discouraged in the primary grades and prohibited thereafter.

Here's another example: Dr. Rudy Crew, Chancellor of the New York City Schools, said in the January 25 New York Times that virtually every student is promoted from one grade to the next, regardless of performance on standardized tests.

Mike Wright, a San Diegian, is an example. Cited in the February 16 San Diego Union-Tribune, Mr. Wright says he routinely got promoted from grade to grade and even graduated from high school, even though he failed some subjects. At age 29, he is now enrolled in a community college program to learn to read—at age 29!

Here are some examples of the harm of social promotion:

In California, a December 1997 report from a state education accountability task force estimated that at least half of the state's students—3 million children—perform below levels considered proficient for their grade level.

A January 1998 poll by Public Agenda asked employers and college professors whether they believe a high school diploma guarantees that a student has mastered basic skills. In this poll, 63% of employers and 76 percent of professors said that the diploma is not a guarantee that a graduate can read, write or do basic math.

Nationwide, about one third of college freshmen take remedial courses in college and three-quarters of all campuses, public and private, offer remediation, says the AFT study.

A March 27 California State University study found that more than two-thirds of students entering Cal State campuses in Los Angeles lack the math or English they should have mastered in high school. At some high schools, not one graduate going on to one of Cal State's campuses passed a basic skills test. At Cal State Dominguez Hills, for example, 8 out of 10 freshmen enrollees last fall needed remedial English and 87 percent needed remedial math.

Sadly, these numbers represent an increase. In the fall of 1997, 47 percent of freshmen enrolled at CSU needed remediation, compared to 43 percent in each of the previous three years. In math, 54 percent needed remedial help, compared to 48 percent in 1994.

Similarly, almost 35 percent of entering freshmen at the University of California do poorly on UC's English proficiency test and must receive help in their first year.

Florida spent $53 million in college on remedial education, says the AFT study.

In Boston, school principals estimate that half their ninth graders are not prepared for high school work.

In Ohio, nearly one fourth of all freshmen who attend state public universities must take remedial math or English (Cleveland Plain Dealer, July 7, 1997)

Employers tell me that their new hires are unprepared for work and they have to provide very basic training to make them employable. For example, last year, MCI spent $7.5 million to provide basic skills training.

Fortunately, many policymakers are beginning to realize that we must stop social promotion. President Clinton called for ending it in his last two State of the Union speeches. Last year, he said, ''We must also demand greater accountability. When we promote a child from grade to grade who hasn't mastered the work, we don't do that child any favors. It is time to end social promotion in America's schools.''

Last year, California's former Governor Pete Wilson, signed into law a bill to end social promotion in our public education system. The bill requires school districts to identify students who are failing based on their grades or scores on the new statewide performance tests. The schools would have to hold back the student unless their teachers submitted a written finding that the student should be allowed to advance to the next grade. In such a case, the teacher would be required to recommend remediation to get the student to the next level, which could include summer school or after-school instruction.

Los Angeles Unified School District is currently working to develop a plan to end the practice of social promotion. Los Angeles Unified School Board plans to identify those students who are at risk of flunking and require them to participate in remedial classes. The alternative curriculum will stress the basics in reading, language arts and math, and special after-school tutoring. The district's plan would take effect in the 1999–2000 school year and target students moving in the third through sixth grades and into the ninth grade.

In San Diego, the School Board adopted requirements that all students in certain grades must demonstrate grade-level performance. And they will require all students to earn a C overall grade average and a C grade in core subjects for high school graduation, effectively ending social promotion for certain grades and for high school graduation. For example, San Diego's schools are requiring that eighth graders who do not pass core courses be retained or pass core courses in summer school.

At least three other states—Florida, Arkansas and Texas—explicitly outlaw social promotion.

The Chicago Public Schools have ditched social promotion. After their new policy was put in place in the spring of 1997, over 40,000 students failed tests in the third, sixth, eight and ninth grades and then went to mandatory summer school. Chicago School Superintendent calls social promotion ''educational malpractice.'' He says from now on his schools' only product will be student achievement.

Cincinnati's students are now promoted based on specific standards that define what students must know.

The AFT study says: ''In most districts, there are no agreed-upon explicit standards of performance to which students are held accountable.''

Our schools need clear, specific achievement levels for the core academic disciplines for every student. Many states are developing those achievement levels or standards. California's Commission for the Establishment of Academic Content and Performance Standards is developing statewide, grade-by-grade academic standards.

Without them, we will never know (1) what our students need to learn and (2) whether they have learned what they should learn. How, I ask, can you measure what you have accomplished if you don't know where you are going?

Sixty-one percent of Californians agreed in 1998 that our schools need a ''major overhaul,'' up from 54 percent who answered the same question two years earlier. A mere six percent believe that schools provide a ''quality education.''

A poll by Policy Analysis for California Education found that only 17 percent of the public considers the state's schools ''good'' or ''excellent,'' down from about 33 percent three years ago.

I hope my colleagues will join me today in stopping social promotion and providing remedial education because we must stop shortchanging our students.

School achievement must mean something. It must mean more than filling up a seat at a desk for 12 years. A diploma should not just be a symbol of accumulating time in school.

Social promotion is a cruel joke. We are fooling students. We are fooling ourselves. Students think a high school diploma means something. But in reality, a diploma does not mean much when we are graduating students who cannot count change, who cannot read a newspaper, or who cannot fill out an employment application. I hope this bill can help.

Mr. President, I ask unanimous consent that the text of the bill and a summary be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 853

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Student Achievement Act of 1999''.

**SEC. 2. REMEDIAL EDUCATION.**

(a) GRANTS AUTHORIZED.—The Secretary is authorized to award grants to high need, low-performing local educational agencies to enable the local educational agencies to carry out remedial education programs that enable kindergarten through grade 12 students who are failing or are at risk of failing to meet State achievement standards in the core academic curriculum.

(b) USE OF FUNDS.—Grant funds awarded under this section may be used to provide prevention and intervention services and

academic instruction, that enable the students described in subsection (a) to meet State achievement standards in the core academic curriculum, such as—

(1) implementing early intervention strategies that identify and support those students who need additional help or alternative instructional strategies;

(2) strengthening instruction and learning by hiring certified teachers to reduce class sizes, providing high quality professional development, and using proven instructional practices and curriculum aligned to State achievement standards;

(3) providing extended learning time, such as before school, after school, and summer school; and

(4) developing intensive instructional intervention strategies for students who fail to meet the State achievement standards.

(c) APPLICATIONS.—Each local educational agency desiring to receive a grant under this section shall submit an application to the Secretary. Each application shall contain—

(1) an assurance that the grant funds will be used in accordance with subsection (b); and

(2) a detailed description of how the local educational agency will use the grant funds to help students meet State achievement standards in the core academic curriculum by providing prevention and intervention services and academic instruction to students who are most at risk of failing to meet the State achievement standards.

(d) CONDITIONS FOR RECEIVING FUNDS.—A local educational agency shall be eligible to receive a grant under this section if the local educational agency or the State educational agency—

(1) adopts a policy prohibiting the practice of social promotion;

(2) adopts a policy requiring that all kindergarten through grade 12 students be subject to State achievement standards in the core academic curriculum at key transition points (to be determined by the State), such as 4th, 8th, and 12th grades, before promotion to the next grade level;

(3) uses tests and other indicators, such as grades and teacher evaluations, to assess student performance in meeting the State achievement standards at key transition points (to be determined by the State), which tests shall be valid for the purpose of such assessment;

(4) provides remedial education to all students not meeting the State achievement standards; and

(5) has substantial numbers of students who are low-performing students.

(e) DEFINITIONS.—In this section:

(1) CORE ACADEMIC CURRICULUM.—The term ''core academic curriculum'' means curriculum in subjects such as reading and writing, language arts, mathematics, social sciences (including history), and science.

(2) LOCAL EDUCATIONAL AGENCY.—The term ''local educational agency'' has the meaning given the term in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

(3) PRACTICE OF SOCIAL PROMOTION.—The term 'practice of social promotion' means a formal or informal practice of promoting a student from the grade for which the determination is made to the next grade when the student fails to meet the State achievement standards in the core academic curriculum, unless the practice is consistent with the student's individualized education program under section 614(d) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d).

(4) SECRETARY.—The term ''Secretary'' means the Secretary of Education.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $500,000,000 for each of the fiscal years 2000 through 2004.

SUMMARY OF THE STUDENT ACHIEVEMENT ACT OF 1999

PROVIDING REMEDIAL EDUCATION & ENDING SOCIAL PROMOTION

Remedial Education: Authorizes $500 million for each year, FY 2000 to 2004, to local education agencies for remedial education programs to enable K–12 students to meet achievement standards in the core academic curriculum.

Eligibility: Local education agencies (school districts) as defined in current law (public schools).

Use of funds: Authorizes school districts to use funds to provide academic instruction to enable students to meet academic achievement standards. Funds can be used to—

implement early intervention strategies for students at risk of failing;

develop intensive instructional intervention strategies for low-performing students;

hire certified teachers and provide professional development;

provide extended learning time, such as before school, after school and summer school.

Conditions for Receiving Remedial Education Funds: Requires school districts to—

adopt a policy prohibiting the practice of social promotion;

require that all K–12 students be subject to achievement standards, to be determined by the states, in the core curriculum, defined as subjects such as reading and writing, language arts, mathematics, social sciences, including history; and science; and

test student achievement in meeting standards at certain benchmarks, to be determined by the states, for advancement to the next grade, distributed evenly over the course of a student's education; and

provide remedial education for students who fail to meet achievement standards;

have substantial numbers of low-performing students.

Social Promotion Defined: The ''practice of social promotion is defined as ''a formal or informal practice of promoting a student from the grade for which the determination is made to the next grade when the student fails to meet the state achievement standards in the core academic curriculum, unless the practice is consistent with the student's individualized education program under section 614(d) of the Individuals with Disabilities Education Act.''

By Mr. LEAHY:

S. 854. A bill to protect the privacy and constitutional rights of Americans, to establish standards and procedures regarding law enforcement access to location information, decryption assistance for encrypted communications and stored electronic information, and other private information, to affirm the rights of Americans to use and sell encryption products as a tool for protecting their online privacy, and for other purposes; to the Committee on the Judiciary.

ELECTRONIC RIGHTS OF THE 21ST CENTURY ACT

Mr. LEAHY. Mr. President, concern over privacy is reaching an all time high. In 1978, 64 percent of Americans reported that they were ''very concerned'' or ''somewhat concerned'' about threats to their personal privacy. By 1998, this number had skyrocketed. According to the Center for Social and Legal Research, 88 percent of Americans reported being ''very'' or ''somewhat concerned'' about threats to their personal privacy. We in Congress must take this concern seriously, and in this regard I look forward to examining the privacy issues confronting us in hearings before the Senate Judiciary Committee.

Good privacy policies make good business policies. New technologies bring with them new opportunities, both for the businesses that develop and market them, and for consumers. It does not do anyone any good for consumers to hesitate to use any particular technology because they have concerns over privacy. That is why I believe that good privacy policies make good business policies.

Protecting privacy plays an important role in the exercise of First Amendment rights. Ensuring that we have adequate privacy laws has a more significant and important role in our democracy than just fostering hi-tech businesses, however. We also must defend our on-line free speech rights from heavy-handed content regulation. That was my purpose in voting against the unconstitutional Communications Decency Act that became law in 1996.

Stopping efforts to create government censors is critical to allow our First Amendment rights to flourish, but it is not enough. For people to feel comfortable in exercising their First Amendment rights—by speaking, traveling and associating freely online or in physical space—they must be able to keep their activities confidential and private. When Big Brother is watching, the exercise of First Amendment rights is chilled no less than the threat of a government censor.

It is therefore not surprising that our country has a long and honorable tradition of keeping our identities private when we exercise our First Amendment rights. The Federalist Papers, which is probably the most important political document ever written about our Constitution, was authored anonymously by James Madison, John Jay and Alexander Hamilton and published under a pseudonym.

Healthy advocacy and debate often rests on the ability of participants to keep their identities private and to act anonymously. Indeed, the Supreme Court has said, ''Anonymity is a shield from the tyranny of the majority.''

Healthy commerce also depends on satisfying consumers' desire to keep their business affairs private and secure. A report I released last month on Vermont Internet commerce is very telling on this point. The strongest obstacle among consumers from shopping and doing business online was their fear of the online security risks. This is why promoting the use of encryption is so important, so that businesses and consumers can use this technology to provide the privacy and security they want and best suits their needs.

The legislation I introduce today would help ensure that Americans' Fourth Amendment rights to be secure

in their persons, houses, papers and effects against unreasonable government searches and seizures are given ample protection in a networked computer environment. In addition, several provisions address the concern Americans have about the use and handling of their personally identifiable records and information by businesses, satellite carriers, libraries and book sellers.

Industry self-regulation efforts should be encouraged. In contrast to a citizen's relationship with his or her government, consumers have a choice of whether they want to deal or interact with those in the private sector. In my view, this choice should be generally recognized in the law by allowing consumers and businesses in the marketplace to set the terms of their interaction. This is an area where the Congress should tread cautiously before regulating. Online businesses are engaging in serious efforts to make available to consumers information on privacy policies so that consumers are able to make more educated choices on whether they want to deal. I commend and applaud those efforts.

That being said, however, current laws do not apply privacy principles in an even-handed manner. Video rental stores and cable operators are subject to privacy laws to protect our right to keep our viewing habits private, but no protections exist for the books we borrow from the library or buy from a bookstore, or the shows we watch via satellite. This bill would provide more uniform privacy protection for both books and videos, no matter the medium of delivery.

Similarly, telephone companies and cable operators are subject to legal restrictions on how they may use personally identifiable information about their Internet subscribers, while other Internet and online service providers are not. The E-RIGHTS bill promotes a more level playing field in terms of the privacy protections available to Internet users, no matter whether they obtain their Internet access from AOL, their cable company or their local phone company.

This legislation addresses a broad range of emerging hi-tech privacy issues. For example:

When should the FBI be allowed to use cell phones to track a user's movements?

Should Kosovo human rights organizations that use a Web site to correct government misinformation be able to get a domain name without having their names publicly available on a database? Should we have the same ability to get an ''unlisted'' domain name (or Internet address) as we are able to get an ''unlisted'' phone number?

Should we allow other federal prosecutors to act like Special Prosecutor Kenneth Starr and go on fishing expeditions with subpoenas issued to bookstores to find out what we are reading? Should we protect our choices of reading and viewing materials the same way we protect our choice of videotapes that we rent from our local Blockbuster?

Should an Internet user who maintains a calendar on Yahoo! get the same privacy protection as people who keep their calendars on their desk or on their PCs' hard-drive? Will people avoid certain network services offered by Netscape or new Internet start-ups because they get less privacy protection for the information stored on the network than on their own PCs?

These are all important issues, and I have worked to propose solutions to each of these and to other questions, as well, in the E-RIGHTS bill. This bill has the following four titles:

Title I: Privacy Protection for Communications and Electronic Information. This title has ten sections that propose certain Fourth Amendment protections to guide the government's access to, or exercise of, law enforcement's enhanced surveillance capabilities due to new technologies. In addition, this title also contains sections that limit how domain name registrars and Internet/Online service providers may use information collected on Internet users.

Network Stored Information.—The bill would require that law enforcement give a subscriber notice of a subpoena or warrant before seizing electronic information stored on a network service. This is the same notice that the subscriber would get if the information were stored on his or her own computer.

Cell Phone Location Information.—Before law enforcement may use a person's cell phone as a tracking device, the bill would require a court order based on probable cause that the person is committing a crime.

A related provision that has already passed the House in February as part of the ''Wireless Communications and Public Safety Act of 1999,'' H.R. 438, would require wireless phone providers to inform a cell phone user's family and emergency services of their location in emergency situations, while requiring the prior customer consent before that location information may be used for any other purpose.

Pen Registers.—The bill would authorize a judge to review information presented by a federal prosecutor to determine whether the pen register is likely to produce information relevant to an ongoing criminal investigation, since under current law the judge plays only a ministerial role and must approve any order upon presentation by a prosecutor. Current law compels judges to be only a rubber stamp.

Conference Calls.—The FBI has claimed that the Communications Assistance for Law Enforcement Act (CALEA) requires that they be given the capability to monitor conference calls which continue even after the target of a wiretap order has dropped out of the call. This provision would require that a court authorize such continued monitoring of conference calls in the absence of the target.

Roving Wiretaps.—A substantial change that provides easier access to roving wiretaps was inserted without debate or hearings into last year's Intelligence Authorization Act. With this change, the FBI is able to get a roving wiretap whenever a person's action could have the effect of thwarting interception. The bill would rectify this change to permit roving wiretaps only when the person actually changes phones in a way which has the effect of thwarting surveillance.

Domain Name Registrars.—Internet users or businesses who get an Internet address with a second level domain name must also provide information about contact names, physical and E-mail addresses, network location, and other information that is posted in a publicly available database called WHOIS. The bill would give users registering for a domain name/Internet address authority to prohibit disclosure of the information, and keep the information confidential. Of course, the registrar would be able to override the user's choice of confidentiality and to disclose the information as necessary to provide service or in response to a subpoena or court order.

Internet users who want an ''unlisted'' Internet address just as they have the choice of getting an ''unlisted'' telephone number will be able to do so.

Internet and Online Service Providers.—The 1986 Electronic Communications Privacy Act (ECPA) set up procedures for law enforcement to obtain records about subscribers from ''electronic communication service providers'', but contained a blanket exemption allowing such providers to disclose a record or other information pertaining to a subscriber or customer to any non-governmental entity. Due to this exemption, ISPs and OSPs may sell their subscriber lists or track the online movements of their subscribers and sell that information—all without the subscribers' knowledge or consent.

The bill would cut back on this blanket exemption. The bill would require electronic communication service providers to give their subscribers an opportunity to prohibit disclosure of their personal information, and enumerates the situations in which the information may be used or disclosed without the subscriber's approval. These proposed rules are generally analogous to restrictions already in place for other providers of Internet services, including cable operators and phone companies, which are restricted in how they may use personally identifiable information about customers without the customers' approval.

No criminal penalties attach for violation. ECPA currently authorizes an aggrieved person to bring a civil action.

Title II: Promoting the Use of Encryption. This title contains three sections: (1) prohibiting domestic controls on encryption and government-

compelled key escrow encryption; (2) requiring encryption products used by federal agencies to interoperate with commercial encryption products; and (3) adding a chapter to the federal criminal code detailing procedures to law enforcement and foreign government access to decryption assistance.

Specifically, the bill would require the release of decryption keys or assistance to law enforcement in response to a court order based upon a finding that the key or assistance is necessary to decrypt lawfully intercepted encrypted messages or data.

Title III: Privacy Protection for Library Loan and Book Sales Records. This title would extend the privacy protection in current law for video rental and sale records to library loan and book sale records.

Library.—The library provisions are a reprise of sections that were dropped from the Video Privacy Protection Act enacted in 1988. This provision would prohibit libraries from disclosing personally identifiable information about patrons without the written consent of the patron or in response to a court order to release the information to a law enforcement agency, with prior notice to the patron, if there is probable cause to believe a crime is being committed and the information sought is material to the investigation.

Booksellers.—The public outcry over Independent Counsel Kenneth Starr's subpoena in March 1988 to Kramerbooks & Afterwords for any books purchased by Monica Lewinsky, and the potential threat such government fishing expeditions pose to First Amendment rights, prompted examination of the privacy rules protecting the records maintained by bookstores. There are no rules barring book sellers from disclosing records about their customers.

This section would impose the same nondisclosure rules on booksellers—whether online or in physical spaces—that apply to video rental stores. Generally, book sellers would be barred from disclosing personally identifiable information concerning a book purchaser without that purchasers' written consent given at the time the disclosure is sought.

Title IV: Privacy Protection for Satellite Home Viewers. In the 1984 Cable Act, Congress established a nationwide standard for the privacy protection of cable subscribers. Since the Cable Act was adopted, an entirely new form of access to television has emerged—home satellite viewing—which is especially popular in rural areas not served by cable. Yet there is no statutory privacy protection for information collected by home satellite viewing services about their customers or subscribers. This title fills this gap by amending the privacy provisions of the Cable Act to cover home satellite viewing.

The amendments do not change the rules governing access to cable subscriber information. Instead, they merely add the words ''satellite home viewing service'' and ''satellite carrier or distributor'' where appropriate.

The amendment does not address another inconsistency in the law, which bears mentioning: should a cable company that provides Internet services to its customers be subject to the privacy safeguards in the Cable Act or in the Electronic Communications Privacy Act (ECPA), which normally applies to Internet service providers and contains obligations regarding the disclosure of personally identifiable information to both governmental and nongovernmental entities different from those in the Cable Act? One court has described this as a ''statutory riddle raised by the entrance of cable operators into the Internet services market.''

New technologies and new uses for old technologies pose challenging ''riddles'' for privacy, but they are solvable in ways that balance competing commerce, civil rights, and law enforcement interests. The E-RIGHTS bill proposes balanced solutions that protect our privacy rights. I invite others to share their ideas on these matters. There are few matters more important than privacy in maintaining our core democratic values, so I look forward to hearing their comments on ways to improve this legislation.

I ask unanimous consent that the E-RIGHTS bill and the sectional analysis be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 854

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the ''Electronic Rights for the 21st Century Act''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:



**SEC. 2. PURPOSES.**

The purposes of this Act are—

(1) to promote the privacy and constitutional rights of individuals and organizations in networked computer systems and other digital environments, protect the confidentiality of information and security of critical infrastructure systems relied on by individuals, businesses and government agencies, and properly balance the needs of law enforcement to have the access to electronic communications and information in appropriate circumstances;

(2) to encourage Americans to develop and deploy encryption technology and to promote the use of encryption by Americans to protect the security, confidentiality, and privacy of their lawful wire and electronic communications and stored electronic information; and

(3) to establish privacy standards and procedures by which investigative or law enforcement officers and foreign governments may obtain decryption assistance for encrypted communications and stored electronic information.

**SEC. 3. FINDINGS.**

Congress finds that—

(1) the digitization of information and the explosion in the growth of computing and electronic networking offers tremendous potential benefits to the way Americans live, work, and are entertained, but also raises new threats to the privacy of the American people and the competitiveness of American businesses;

(2) a secure, private, and trusted national and global information infrastructure is essential to promote economic growth, protect privacy, and meet the needs of the American people and businesses;

(3) the rights of Americans to the privacy and security of their communications and in the conducting of personal and business affairs should be promoted and protected;

(4) the authority and ability of investigative and law enforcement officers to access and decipher, in a timely manner and as provided by law, wire and electronic communications, and stored electronic information necessary to provide for public safety and national security should also be preserved;

(5) individuals will not entrust their sensitive personal, medical, financial, and other information to computers and computer networks unless the security and privacy of that information is assured;

(6) businesses will not entrust their proprietary and sensitive corporate information, including information about products, processes, customers, finances, and employees, to computers and computer networks unless the security and privacy of that information is assured;

(7) America's critical infrastructures, including its telecommunications system, banking and financial infrastructure, and power and transportation infrastructure, increasingly rely on vulnerable information

systems, and will represent a growing risk to national security and public safety unless the security and privacy of those information systems is assured;

(8) encryption technology is an essential tool to promote and protect the privacy, security, confidentiality, integrity, and authenticity of wire and electronic communications and stored electronic information;

(9) encryption techniques, technology, programs, and products are widely available worldwide;

(10) Americans should be free to use lawfully whatever particular encryption techniques, technologies, programs, or products developed in the marketplace that best suits their needs in order to interact electronically with the government and others worldwide in a secure, private, and confidential manner;

(11) government mandates for, or otherwise compelled use of, third-party key recovery systems or other systems that provide surreptitious access to encrypted data threatens the security and privacy of information systems;

(12) a national encryption policy is needed to advance the development of the national and global information infrastructure, and preserve the right to privacy of Americans and the public safety and national security of the United States;

(13) Congress and the American people have recognized the need to balance the right to privacy and the protection of the public safety with national security;

(14) the Constitution of the United States permits lawful electronic surveillance and the use of other investigative tools by law enforcement officers and the seizure of stored electronic information only upon compliance with stringent standards and procedures designed to protect the right to privacy and other rights protected under the fourth amendment of the Constitution of the United States;

(15) there is a need to clarify the standards and procedures by which investigative or law enforcement officers obtain decryption assistance from persons—

(A) who are voluntarily entrusted with the means to decrypt wire and electronic communications and stored electronic information; or

(B) have information that enables the decryption of such communications and information;

(16) Americans are increasingly shopping online and purchasing books from online vendors, and expect that their choices of reading or viewing materials will be kept confidential;

(17) protecting the confidentiality and privacy of the books, other written materials, and movies that a person chooses to read or view should be protected to ensure the free exercise of first amendment rights regardless of medium;

(18) generally, under current law, telecommunications carriers may not disclose individually identifiable customer proprietary network information without their customers' approval, while providers of electronic communications services and remote computing services may make such disclosure to anyone other than a governmental entity and have no legal obligation to notify their subscribers when they do so;

(19) subscribers of Internet services through facilities of cable operators must be given notice and an opportunity to prohibit disclosure before the cable operator may disclose any personally identifiable information, including name or address, about a subscriber to any other person, while providers of electronic communications services and remote computing services have no similar legal obligation to protect the privacy of their subscribers; and

(20) given the convergence among wireless, wire line, cable, broadcast, and satellite services, privacy safeguards should be applied more uniformly across different media in order to provide a level competitive playing field and consistent privacy protections.

**SEC. 4. DEFINITIONS.**

In this Act:

(1) AGENCY.—The term ''agency'', in the case of the United States Government, has the meaning given the term in section 6 of title 18, United States Code, and includes the United States Postal Service.

(2) ENCRYPT; ENCRYPTION.—The terms ''encrypt'' and ''encryption'' refer to the scrambling (and descrambling) of wire communications, electronic communications, or electronically stored information using mathematical formulas or algorithms in order to preserve the confidentiality, integrity, or authenticity of, and prevent unauthorized recipients from accessing or altering, such communications or information.

(3) ENCRYPTION PRODUCT.—The term ''encryption product'' means a computing device, computer hardware, computer software, or technology with encryption capabilities.

(4) KEY.—The term ''key'' means the variable information used in or produced by a mathematical formula, code, or algorithm, or any component thereof, used to encrypt or decrypt wire communications, electronic communications, or electronically stored information.

(5) PERSON.—The term ''person'' has the meaning given the term in section 2510(6) of title 18, United States Code.

(6) STATE.—The term ''State'' includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(7) UNITED STATES PERSON.—The term ''United States person'' means any—

(A) national of the United States; or

(B) legal entity that—

(i) is organized under the laws of the United States or any State; and

(ii) has its principal place of business in the United States.

## TITLE I—PRIVACY PROTECTION FOR COMMUNICATIONS AND ELECTRONIC INFORMATION

**SEC. 101. ENHANCED PRIVACY PROTECTION FOR INFORMATION ON COMPUTER NETWORKS.**

Section 2703(b) of title 18, United States Code, is amended by striking paragraph (1) and inserting the following new paragraph (1):

''(1) IN GENERAL.—A governmental entity may require a provider of remote computing service to disclose the contents of any electronic communication to which this paragraph is made applicable by paragraph (2)—

''(A) pursuant to a warrant issued under the Federal Rules of Criminal Procedure or equivalent State warrant, a copy of which warrant shall be served on the subscriber or customer of such remote computing service before or at the same time the warrant is served on the provider of the remote computing service; or

''(B) pursuant to a Federal or State grand jury or trial subpoena, a copy of which subpoena shall be served on the subscriber or customer of such remote computing service under circumstances allowing the subscriber or customer a meaningful opportunity to challenge the subpoena.''.

(b) CONFORMING AMENDMENTS.—Paragraph (2) of that section is amended—

(1) by indenting the paragraph 2 ems;

(2) by inserting ''APPLICABILITY.—'' after ''(2)''; and

(3) by indenting subparagraphs (A) and (B) 4 ems.

**SEC. 102. GOVERNMENT ACCESS TO LOCATION INFORMATION.**

(a) COURT ORDER REQUIRED.—Section 2703 of title 18, United States Code, is amended by adding at the end the following:

''(g) DISCLOSURE OF LOCATION INFORMATION TO GOVERNMENTAL ENTITIES.—

''(1) DISCLOSURE UPON COURT ORDER.—A provider of mobile electronic communication service shall provide to a governmental entity information generated by and disclosing the current physical location of a subscriber's equipment only if the governmental entity obtains a court order issued upon a finding that there is probable cause to believe that the equipment has been used, is being used, or is about to be used to commit a felony offense.

''(2) DISCLOSURE UPON SUBSCRIBER OR USER CONSENT.—A provider of mobile electronic communication service may provide to a governmental entity information described in paragraph (1) with the consent of the subscriber or the user of the equipment concerned.''.

(b) CONFORMING AMENDMENT.—Subsection (c)(1)(B) of that section is amended by striking ''(b) of this section'' and inserting ''(b), or wireless location information covered by subsection (g)''.

**SEC. 103. ENHANCED PRIVACY PROTECTION FOR TRANSACTIONAL INFORMATION OBTAINED FROM PEN REGISTERS AND TRAP AND TRACE DEVICES.**

Section 3123(a) of title 18, United States Code, is amended to read as follows:

''(a) IN GENERAL.—Upon an application made under section 3122, the court may enter an ex parte order—

''(1) authorizing the installation and use of a pen register or a trap and trace device within the jurisdiction of the court if the court finds, based on the certification by the attorney for the government or the State law enforcement or investigative officer, that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation; and

''(2) directing that the use of the pen register or trap and trace device be conducted in such a way as to minimize the recording or decoding of any electronic or other impulses that are not related to the dialing and signaling information utilized in call processing by the service provider upon whom the order is served.''.

**SEC. 104. PRIVACY PROTECTION FOR CONFERENCE CALLS.**

Section 2518 of title 18, United States Code, is amended by adding at the end the following:

''(13) The interception of wire or electronic communications pursuant to an order under this section must be terminated when the facility identified in the order authorizing such interception is no longer being used, unless the judge determines on the basis of facts submitted by the applicant that there is probable cause to believe that an individual continuing as a party to the communication is committing, has committed, or is about to commit a particular offense enumerated in the order and there is probable cause to believe that particular communications concerning that offense will be obtained through such continuing interception.''.

**SEC. 105. ENHANCED PRIVACY PROTECTION FOR PACKET NETWORKS, INCLUDING THE INTERNET.**

Section 3121(c) of title 18, United States Code, is amended by striking ''other impulses'' and all that follows and inserting ''other impulses—

''(1) to the dialing and signaling information utilized in call processing; or

''(2) in the case of a packet-switched network, to the addressing information.''.

**SEC. 106. PRIVACY SAFEGUARDS FOR INFORMATION COLLECTED BY INTERNET REGISTRARS.**

(a) IN GENERAL.—Section 2703 of title 18, United States Code, as amended by section 102(a) of this Act, is further amended by adding at the end the following:

''(h) RECORDS CONCERNING DOMAIN NAME REGISTRATION SERVICE.—A provider of domain name registration service may disclose a record or other information pertaining to a subscriber or customer of such service—

''(1) to any person—

''(A) if the provider has provided the subscriber or customer, in a clear and conspicuous manner, the opportunity to prohibit such disclosure;

''(B) in the case of information that identifies the service provider hosting the website of the subscriber or customer; or

''(C) to the extent such disclosure is necessary incident to the provision of such service or for the protection of the rights or property of the provider of such service; or

''(2) without notice or consent of the subscriber or customer in response to a subpoena or warrant authorized by a Federal or State statute.''.

(b) DOMAIN NAME REGISTRATION SERVICE DEFINED.—Section 2711 of such title is amended—

(1) in paragraph (1), by striking ''and'' at the end;

(2) in paragraph (2), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(3) the term 'domain name registration service' means a service to the public for the assignment and management of domain names and Internet Protocol addresses.''.

**SEC. 107. REPORTS CONCERNING GOVERNMENTAL ACCESS TO ELECTRONIC COMMUNICATIONS.**

Section 2703 of title 18, United States Code, as amended by section 106(a) of this Act, is further amended by adding at the end the following:

''(i) REPORTS.—In April each year, the Attorney General shall transmit to Congress a full and complete report on—

''(1) the number and kind of warrants, orders, and subpoenas applied for by law enforcement agencies of the Department of Justice under this section;

''(2) the number of such applications granted or denied; and

''(3) with respect to each warrant, order, or subpoena issued under this section—

''(A) the number and type of communications disclosed;

''(B) the approximate number and frequency of incriminating communications disclosed;

''(C) the offense specified in the application; and

''(D) the approximate number of persons whose communications were intercepted.''.

**SEC. 108. ROVING WIRETAPS.**

(a) SCOPE OF WIRETAPS.—Subsection (11)(b) of section 2518 of title 18, United States Code, is amended by striking clauses (ii) through (iv) and inserting the following new clauses:

''(ii) the application identifies the person believed to be committing the offense and whose communications are to be intercepted and the applicant makes a showing that—

''(I) the person changes facilities in a way that has the effect of thwarting interception from a specified facility; or

''(II) the person intends to thwart interception by changing facilities; and

''(iii) the judge finds that such showing has been adequately made.''.

(b) LIMITATION.—Subsection (12) of that section is amended—

(1) by inserting ''(a)'' after ''(12)''; and

(2) by adding at the end the following:

''(b) Each order and extension thereof to which the requirements of subsections (1)(b)(ii) and (3)(D) of this section do not apply by reason of subsection (11) of this section shall provide that the authorization to intercept only applies to communications to which the person believed to be committing the offense and named in the order is a party.''.

**SEC. 109. AUTHORITY TO PROVIDE CUSTOMER LOCATION INFORMATION FOR EMERGENCY PURPOSES.**

(a) USE OF CALL LOCATION AND CRASH NOTIFICATION INFORMATION.—Subsection (d) of section 222 of the Communications Act of 1934 (47 U.S.C. 222) is amended—

(1) by striking ''or'' at the end of paragraph (2);

(2) by striking the period at the end of paragraph (3) and inserting a semicolon; and

(3) by adding at the end the following new paragraphs:

''(4) to provide call location information concerning the user of a commercial mobile service (as such term is defined in section 332(d))—

''(A) to a public safety answering point, emergency medical service provider or emergency dispatch provider, public safety official, fire service official, law enforcement official, hospital emergency facility, or trauma care facility in order to respond to the user's call for emergency services;

''(B) to inform the user's legal guardian or members of the user's immediate family of the user's location in an emergency situation that involves the risk of death or serious physical harm; or

''(C) to providers of information or database management services solely for purposes of assisting in the delivery of emergency services in response to an emergency; or

''(5) to transmit automatic crash notification information as part of the operation of an automatic crash notification system.''.

(b) CUSTOMER APPROVAL OF USE OF CALL LOCATION AND CRASH NOTIFICATION INFORMATION.—That section is further amended—

(1) by redesignating subsection (f) as subsection (h); and

(2) by inserting after subsection (e) the following new subsection (f):

''(f) CUSTOMER APPROVAL OF USE OF CALL LOCATION INFORMATION AND CRASH NOTIFICATION INFORMATION.—For purposes of subsection (c)(1), without the express prior authorization of the customer, a customer shall not be considered to have approved the use or disclosure of or access to—

''(1) call location information concerning the user of a commercial mobile service (as such term is defined in section 332(d)), other than in accordance with subsection (d)(4); or

''(2) automatic crash notification information to any person other than for use in the operation of an automatic crash notification system.''.

(c) USE OF LISTED AND UNLISTED SUBSCRIBER INFORMATION FOR EMERGENCY SERVICES.—That section is further amended by inserting after subsection (f), as amended by subsection (b) of this section, the following new subsection (g):

''(g) SUBSCRIBER LISTED AND UNLISTED INFORMATION FOR EMERGENCY SERVICES.—Notwithstanding subsections (b), (c), and (d), a telecommunications carrier that provides telephone exchange service shall provide information described in subsection (h)(3)(A) (including information pertaining to subscribers whose information is unlisted or unpublished) that is in its possession or control (including information pertaining to subscribers of other carriers) on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions to providers of emergency services, and providers of emergency support services, solely for purposes of delivering or assisting in the delivery of emergency services.''.

(d) DEFINITIONS.—Subsection (h) of that section, as redesignated by subsection (b)(1) of this section, is amended—

(1) in paragraph (1)(A), by inserting ''location,'' after ''destination,''; and

(2) by adding at the end the following:

''(4) PUBLIC SAFETY ANSWERING POINT.—The term 'public safety answering point' means a facility that has been designated to receive emergency calls and route them to emergency service personnel.

''(5) EMERGENCY SERVICES.—The term 'emergency services' means 911 emergency services and emergency notification services.

''(6) EMERGENCY NOTIFICATION SERVICES.—The term 'emergency notification services' means services that notify the public of an emergency.

''(7) EMERGENCY SUPPORT SERVICES.—The term 'emergency support services' means information or data base management services used in support of emergency services.''.

**SEC. 110. CONFIDENTIALITY OF SUBSCRIBER INFORMATION.**

Section 2703(c) of title 18, United States Code, is amended—

(1) in paragraph (1)(A), by inserting before the period at the end the following: ''only if such disclosure is—

''(i) necessary to initiate, render, bill, and collect for such service;

''(ii) necessary to protect the rights or property of the provider of such service;

''(iii) required by law;

''(iv) made at the request of the subscriber or customer; or

''(v) if the provider has provided the subscriber or customer, in a clear and conspicuous manner, with the opportunity to prohibit such disclosure.''; and

(2) by adding at the end the following:

''(3) Nothing in this subsection may be construed to prohibit a provider of electronic communication service or remote computing service from using, disclosing, or permitting access to aggregate subscriber information from which individual subscriber identities and characteristics have been removed.''.

## TITLE II—PROMOTING USE OF ENCRYPTION

**SEC. 201. FREEDOM TO USE ENCRYPTION.**

(a) NO DOMESTIC ENCRYPTION CONTROLS.—It shall be lawful for any person within the United States, and for any United States person in a foreign country, to use, develop, manufacture, sell, distribute, or import any encryption product, regardless of the encryption algorithm selected, encryption key length chosen, existence of key recovery or other plaintext access capability, or implementation or medium used.

(b) PROHIBITION ON GOVERNMENT-COMPELLED KEY ESCROW OR KEY RECOVERY.—

(1) IN GENERAL.—Except as provided in paragraph (3), no agency of the United States may require, compel, set standards for, condition any approval on, or condition the receipt of any benefit on, a requirement that a decryption key, access to a decryption key, key recovery information, or other plaintext access capability be—

(A) required to be built into computer hardware or software for any purpose;

(B) given to any other person, including any agency of the United States or a State, or any entity in the private sector; or

(C) retained by the owner or user of an encryption key or any other person, other than for encryption products for the use of the Federal Government or a State government.

(2) USE OF PARTICULAR PRODUCTS.—No agency of the United States may require any person who is not an employee or agent of the United States or a State to use any key recovery or other plaintext access features for communicating or transacting business with any agency of the United States.

(3) EXCEPTIONS.—The prohibition in paragraph (1) does not apply to—

(A) encryption used by an agency of the United States, or the employees or agents of such agency, solely for the internal operations and telecommunications systems of the United States Government; or

(B) the authority of any investigative or law enforcement officer, or any member of the intelligence community (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 401a)), acting under any law in effect on the date of enactment of this Act, to gain access to encrypted communications or information.

(c) USE OF ENCRYPTION FOR AUTHENTICATION OR INTEGRITY PURPOSES.—No agency of the United States shall establish any condition, tie, or link between encryption products, standards, and services used for confidentiality purposes and those used for authentication, integrity, or access control purposes.

**SEC. 202. PURCHASE AND USE OF ENCRYPTION PRODUCTS BY THE FEDERAL GOVERNMENT.**

To ensure that secure electronic access to the Federal Government is available to persons outside of and not operating under contract with agencies of the United States, the Federal Government may not purchase any encryption product with a key recovery or other plaintext access feature if such key recovery or plaintext access feature would interfere with use of the full encryption capabilities of the product when interoperating with other commercial encryption products.

**SEC. 203. LAW ENFORCEMENT DECRYPTION ASSISTANCE.**

(a) IN GENERAL.—Part I of title 18, United States Code, is amended by adding at the end the following:

**"CHAPTER 124—ENCRYPTED WIRE OR ELECTRONIC COMMUNICATIONS AND STORED ELECTRONIC INFORMATION**



**"§ 2801. Definitions**

''In this chapter:

''(1) DECRYPTION ASSISTANCE.—The term 'decryption assistance' means assistance that provides or facilitates access to the plaintext of an encrypted wire or electronic communication or stored electronic information, including the disclosure of a decryption key or the use of a decryption key to produce plaintext.

''(2) DECRYPTION KEY.—The term 'decryption key' means the variable information used in or produced by a mathematical formula, code, or algorithm, or any component thereof, used to decrypt a wire communication or electronic communication or stored electronic information that has been encrypted.

''(3) ENCRYPT; ENCRYPTION.—The terms 'encrypt' and 'encryption' refer to the scrambling (and descrambling) of wire communications, electronic communications, or electronically stored information using mathematical formulas or algorithms in order to preserve the confidentiality, integrity, or authenticity of, and prevent unauthorized recipients from accessing or altering, such communications or information.

''(4) FOREIGN GOVERNMENT.—The term 'foreign government' has the meaning given the term in section 1116.

''(5) OFFICIAL REQUEST.—The term 'official request' has the meaning given the term in section 3506(c).

''(6) INCORPORATED DEFINITIONS.—Any term used in this chapter that is not defined in this chapter and that is defined in section 2510, has the meaning given the term in section 2510.

**"§ 2802. Access to decryption assistance for communications**

''(a) CRIMINAL INVESTIGATIONS.—

''(1) IN GENERAL.—An order authorizing the interception of a wire or electronic communication under section 2518 shall, upon request of the applicant, direct that a provider of wire or electronic communication service, or any other person possessing information capable of decrypting that communication, other than a person whose communications are the subject of the interception, shall promptly furnish the applicant with the necessary decryption assistance, if the court finds that the decryption assistance sought is necessary for the decryption of a communication intercepted pursuant to the order.

''(2) LIMITATIONS.—Each order described in paragraph (1), and any extension of such an order, shall—

''(A) contain a provision that the decryption assistance provided shall involve disclosure of a private decryption key only if no other form of decryption assistance is available and otherwise shall be limited to the minimum necessary to decrypt the communications intercepted pursuant to such order; and

''(B) terminate on the earlier of—

''(i) the date on which the authorized objective is attained; or

''(ii) 30 days after the date on which the order or extension, as applicable, is issued.

''(3) NOTICE.—If decryption assistance is provided pursuant to an order under this subsection, the court issuing the order shall cause to be served on the person whose communications are the subject of such decryption assistance, as part of the inventory required to be served pursuant to section 2518(8), notice of the receipt of the decryption assistance and a specific description of the decryption keys or other decryption assistance disclosed.

''(b) FOREIGN INTELLIGENCE INVESTIGATIONS.—

''(1) IN GENERAL.—An order authorizing the interception of a wire or electronic communication under section 105(b)(2) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805(b)(2)) shall, upon request of the applicant, direct that a provider of wire or electronic communication service, or any other person possessing information capable of decrypting such communications, other than a person whose communications are the subject of the interception, shall promptly furnish the applicant with the necessary decryption assistance, if the court finds that the decryption assistance sought is necessary for the decryption of a communication intercepted pursuant to the order.

''(2) LIMITATIONS.—Each order described in paragraph (1), and any extension of such an order, shall—

''(A) contain a provision that the decryption assistance provided shall be limited to the minimum necessary to decrypt the communications intercepted pursuant to such order; and

''(B) terminate on the earlier of—

''(i) the date on which the authorized objective is attained; or

''(ii) 30 days after the date on which the order or extension, as applicable, is issued.

''(c) GENERAL PROHIBITION ON DISCLOSURE.—Other than pursuant to an order under subsection (a) or (b), no person possessing information capable of decrypting a wire or electronic communication of another person shall disclose that information or provide decryption assistance to an investigative or law enforcement officer.

**"§ 2803. Access to decryption assistance for stored electronic communications or records**

''(a) DECRYPTION ASSISTANCE.—No person may disclose a decryption key or provide decryption assistance pertaining to the contents of stored electronic communications or records, including those disclosed pursuant to section 2703, to a governmental entity, except—

''(1) pursuant to a warrant issued under the Federal Rules of Criminal Procedure or an equivalent State warrant, a copy of which warrant shall be served on the person who created the electronic communication or record before or at the same time service is made on the keyholder;

''(2) pursuant to a subpoena, a copy of which subpoena shall be served on the person who created the electronic communication or record, under circumstances allowing the person meaningful opportunity to challenge the subpoena; or

''(3) upon the consent of the person who created the electronic communication or record.

''(b) DELAY OF NOTIFICATION.—In the case of communications disclosed pursuant to section 2703(a), service of the copy of the warrant or subpoena on the person who created the electronic communication or record may be delayed for a period of not to exceed 90 days upon request to the court by the governmental entity requiring the decryption assistance, if the court determines that there is reason to believe that notification of the existence of the court order or subpoena may have an adverse result described in section 2705(a)(2).

**"§ 2804. Foreign government access to decryption assistance**

''(a) IN GENERAL.—No investigative or law enforcement officer may—

''(1) release a decryption key to a foreign government or to a law enforcement agency of a foreign government; or

''(2) except as provided in subsection (b), provide decryption assistance to a foreign government or to a law enforcement agency of a foreign government.

''(b) CONDITIONS FOR COOPERATION WITH FOREIGN GOVERNMENT.—

''(1) APPLICATION FOR ORDER.—In any case in which the United States has entered into a treaty or convention with a foreign government to provide mutual assistance with respect to providing decryption assistance, the Attorney General (or the designee of the Attorney General) may, upon an official request to the United States from the foreign government, apply for an order described in paragraph (2) from the district court in which the person possessing information capable of decrypting the encrypted communication or stored electronic information at issue resides—

''(A) directing that person to release a decryption key or provide decryption assistance to the Attorney General (or the designee of the Attorney General); and

''(B) authorizing the Attorney General (or the designee of the Attorney General) to furnish the foreign government with the plaintext of the communication or information at issue.

''(2) CONTENTS OF ORDER.—An order described in this paragraph is an order directing the person possessing information capable of decrypting the communication or information at issue to—

''(A) release a decryption key to the Attorney General (or the designee of the Attorney General) so that the plaintext of the communication or information may be furnished to the foreign government; or

''(B) provide decryption assistance to the Attorney General (or the designee of the Attorney General) so that the plaintext of the

communication or information may be furnished to the foreign government.

''(3) REQUIREMENTS FOR ORDER.—The court described in paragraph (1) may issue an order described in paragraph (2) if the court finds, on the basis of an application made by the Attorney General under this subsection, that—

''(A) the decryption key or decryption assistance sought is necessary for the decryption of a communication or information that the foreign government is authorized to intercept or seize pursuant to the law of the foreign country;

''(B) the law of the foreign country provides for adequate protection against arbitrary interference with respect to privacy rights; and

''(C) the decryption key or decryption assistance is being sought in connection with a criminal investigation for conduct that would constitute a violation of a criminal law of the United States if committed within the jurisdiction of the United States.''.

(b) CLERICAL AMENDMENT.—The analysis for part I of title 18, United States Code, is amended by adding at the end the following:

**''124. Encrypted wire or electronic communications and stored electronic information ..... 2801''.**

## TITLE III—PRIVACY PROTECTION FOR LIBRARY LOAN AND BOOK SALE RECORDS

### SEC. 301. WRONGFUL DISCLOSURE OF LIBRARY LOAN AND BOOK SALE RECORDS.

(a) IN GENERAL.—Section 2710 of title 18, United States Code, is amended—

(1) by redesignating subsections (c) through (f) as subsections (d) through (g), respectively; and

(2) by striking the section designation and all that follows through the end of subsection (b) and inserting the following:

**''§ 2710. Wrongful disclosure of video tape rental or sale records and library loan and book sale records**

''(a) DEFINITIONS.—In this section:

''(1) The term 'book seller' means any person, engaged in the business, in or affecting interstate or foreign commerce, of selling books, magazines, or other printed material, or any person or other entity to whom a disclosure is made under subparagraph (D) or (E) of subsection (b)(2), but only with respect to the information contained in the disclosure.

''(2) The term 'consumer' means any renter, purchaser, or subscriber of goods or services from a video tape service provider or book seller.

''(3) The term 'library' means an institution that operates as a public library or serves as a library for any university, school, or college.

''(4) The term 'ordinary course of business' means only debt collection activities, order fulfillment, request processing, and the transfer of ownership.

''(5) The term 'patron' means any individual who requests or receives—

''(A) services within a library; or

''(B) books or other materials on loan from a library.

''(6) The term 'personally identifiable information' includes the following:

''(A) Information that identifies a person as having requested or obtained specific video materials or services from a video tape service provider.

''(B) Information that identifies a person as having requested or obtained specific books, magazines, or other printed material from a book seller.

''(C) Information that identifies a person as having requested or obtained any materials or services from a library.

''(7) The term 'video tape service provider' means any person, engaged in the business, in or affecting interstate or foreign commerce, of rental, sale, or delivery of prerecorded video cassette tapes or similar audio visual materials, or any person or other entity to whom a disclosure is made under subparagraph (D) or (E) of subsection (b)(2), but only with respect to the information contained in the disclosure.

''(b) VIDEO TAPE RENTAL AND SALE AND BOOK SALE RECORDS.—

''(1) IN GENERAL.—A video tape service provider or book seller who knowingly discloses, to any person, personally identifiable information concerning any consumer of such provider or seller, as the case may be, shall be liable to the aggrieved person for the relief provided in subsection (d).

''(2) DISCLOSURE.—A video tape service provider or book seller may disclose personally identifiable information concerning any consumer—

''(A) to the consumer;

''(B) to any person with the informed, written consent of the consumer given at the time the disclosure is sought;

''(C) to a law enforcement agency pursuant to a warrant issued under the Federal Rules of Criminal Procedure, an equivalent State warrant, or a court order issued in accordance with paragraph (4);

''(D) to any person if the disclosure is solely of the names and addresses of consumers and if—

''(i) the video tape service provider or book seller, as the case may be, has provided the consumer, in a clear and conspicuous manner, with the opportunity to prohibit such disclosure; and

''(ii) the disclosure does not identify the title, description, or subject matter of any video tapes or other audio visual material, or books magazines, or other printed material, except that the subject matter of such materials may be disclosed if the disclosure is for the exclusive use of marketing goods and services directly to the consumer;

''(E) to any person if the disclosure is incident to the ordinary course of business of the video tape service provider or book seller; or

''(F) pursuant to a court order, in a civil proceeding upon a showing of compelling need for the information that cannot be accommodated by any other means, if—

''(i) the consumer is given reasonable notice, by the person seeking the disclosure, of the court proceeding relevant to the issuance of the court order; and

''(ii) the consumer is afforded the opportunity to appear and contest the claim of the person seeking the disclosure.

''(3) SAFEGUARDS.—If an order is granted pursuant to subparagraph (C) or (F) of paragraph (2), the court shall impose appropriate safeguards against unauthorized disclosure.

''(4) COURT ORDERS.—A court order authorizing disclosure under paragraph (2)(C) shall issue only with prior notice to the consumer and only if the law enforcement agency shows that there is probable cause to believe that a person has engaged, is engaging, or is about to engage in criminal activity and that the records or other information sought are material to the investigation of such activity. In the case of a State government authority, such a court order shall not issue if prohibited by the law of such State. A court issuing an order pursuant to this subsection, on a motion made promptly by the video tape service provider or the book seller, may quash or modify such order if the information or records requested are unreasonably voluminous in nature or if compliance with such order otherwise would cause an unreasonable burden on such provider or seller, as the case may be.

''(c) LIBRARY RECORDS.—

''(1) IN GENERAL.—Any library that knowingly discloses, to any person, personally identifiable information concerning any patron of the library shall be liable to the aggrieved person as provided in subsection (d).

''(2) DISCLOSURE.—A library may disclose personally identifiable information concerning any patron—

''(A) to the patron;

''(B) to any person with the informed written consent of the patron given at the time the disclosure is sought;

''(C) to a law enforcement agency pursuant to a warrant issued under the Federal Rules of Criminal Procedure, an equivalent State warrant, or a court order issued in accordance with paragraph (4);

''(D) to any person if the disclosure is solely of the names and addresses of patrons and if—

''(i) the library has provided the patron with a written statement that affords the patron the opportunity to prohibit such disclosure; and

''(ii) the disclosure does not reveal, directly or indirectly, the title, description, or subject matter of any library materials borrowed or services utilized by the patron;

''(E) to any authorized person if the disclosure is necessary for the retrieval of overdue library materials or the recoupment of compensation for damaged or lost library materials; or

''(F) pursuant to a court order, in a civil proceeding upon a showing of compelling need for the information that cannot be accommodated by any other means, if—

''(i) the patron is given reasonable notice, by the person seeking the disclosure, of the court proceeding relevant to the issuance of the court order; and

''(ii) the patron is afforded the opportunity to appear and contest the claim of the person seeking the disclosure.

''(3) SAFEGUARDS.—If an order is granted pursuant to subparagraph (C) or (F) of paragraph (2), the court shall impose appropriate safeguards against unauthorized disclosure.

''(4) COURT ORDERS.—A court order authorizing disclosure under paragraph (2)(C) shall issue only with prior notice to the patron and only if the law enforcement agency shows that there is probable cause to believe that a person has engaged, is engaging or is about to engage in criminal activity and that the records or other information sought are material to the investigation of such activity. In the case of a State government authority, such a court order shall not issue if prohibited by the law of such State. A court issuing an order pursuant to this subsection, on a motion made promptly by the library, may quash or modify such order if the information or records requested are unreasonably voluminous in nature or if compliance with such order otherwise would cause an unreasonable burden on the library.''.

(b) CLERICAL AMENDMENT.—The item relating to section 2701 in the analysis for chapter 121 of title 18, United States Code, is amended to read as follows:

''2710. Wrongful disclosure of video tape rental or sale records and library loan and book sale records.''.

## TITLE IV—PRIVACY PROTECTION FOR SATELLITE HOME VIEWERS

### SEC. 401. PRIVACY PROTECTION FOR SUBSCRIBERS OF SATELLITE TELEVISION SERVICES FOR PRIVATE HOME VIEWING.

(a) IN GENERAL.—Section 631 of the Communications Act of 1934 (47 U.S.C. 551) is amended to read as follows:

**''SEC. 631. PRIVACY OF SUBSCRIBER INFORMATION FOR SUBSCRIBERS OF CABLE SERVICE AND SATELLITE TELEVISION SERVICE.**

''(a) NOTICE TO SUBSCRIBERS REGARDING PERSONALLY IDENTIFIABLE INFORMATION.—At

the time of entering into an agreement to provide any cable service, satellite home viewing service, or other service to a subscriber, and not less often than annually thereafter, a cable operator, satellite carrier, or distributor shall provide notice in the form of a separate, written statement to such subscriber that clearly and conspicuously informs the subscriber of—

''(1) the nature of personally identifiable information collected or to be collected with respect to the subscriber as a result of the provision of such service and the nature of the use of such information;

''(2) the nature, frequency, and purpose of any disclosure that may be made of such information, including an identification of the types of persons to whom the disclosure may be made;

''(3) the period during which such information will be maintained by the cable operator, satellite carrier, or distributor;

''(4) the times and place at which the subscriber may have access to such information in accordance with subsection (d); and

''(5) the limitations provided by this section with respect to the collection and disclosure of information by the cable operator, satellite carrier, or distributor and the right of the subscriber under this section to enforce such limitations.

''(b) COLLECTION OF PERSONALLY IDENTIFIABLE INFORMATION.—

''(1) IN GENERAL.—Except as provided in paragraph (2), a cable operator, satellite carrier, or distributor shall not use its cable or satellite system to collect personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber.

''(2) EXCEPTION.—A cable operator, satellite carrier, or distributor may use its cable or satellite system to collect information described in paragraph (1) in order to—

''(A) obtain information necessary to render a cable or satellite service or other service provided by the cable operator, satellite carrier, or distributor to the subscriber; or

''(B) detect unauthorized reception of cable or satellite communications.

''(c) DISCLOSURE OF PERSONALLY IDENTIFIABLE INFORMATION.—

''(1) IN GENERAL.—Except as provided in paragraph (2), a cable operator, satellite carrier, or distributor may not disclose personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber and shall take such actions as are necessary to prevent unauthorized access to such information by a person other than the subscriber or the cable operator, satellite carrier, or distributor.

''(2) EXCEPTIONS.—A cable operator, satellite carrier, or distributor may disclose information described in paragraph (1) if the disclosure is—

''(A) necessary to render, or conduct a legitimate business activity related to, a cable or satellite service or other service provided by the cable operator, satellite carrier, or distributor to the subscriber;

''(B) subject to paragraph (3), made pursuant to a court order authorizing such disclosure, if the subscriber is notified of such order by the person to whom the order is directed; or

''(C) a disclosure of the names and addresses of subscribers to any other provider of cable or satellite service or other service, if—

''(i) the cable operator, satellite carrier, or distributor has provided the subscriber the opportunity to prohibit or limit such disclosure; and

''(ii) the disclosure does not reveal, directly or indirectly—

''(I) the extent of any viewing or other use by the subscriber of a cable or satellite service or other service provided by the cable operator, satellite carrier, or distributor; or

''(II) the nature of any transaction made by the subscriber over the cable or satellite system of the cable operator, satellite carrier, or distributor.

''(3) COURT ORDERS.—A governmental entity may obtain personally identifiable information concerning a cable or satellite subscriber pursuant to a court order only if, in the court proceeding relevant to such court order—

''(A) such entity offers clear and convincing evidence that the subject of the information is reasonably suspected of engaging in criminal activity and that the information sought would be material evidence in the case; and

''(B) the subject of the information is afforded the opportunity to appear and contest such entity's claim.

''(d) SUBSCRIBER ACCESS TO INFORMATION.—A cable or satellite subscriber shall be provided access to all personally identifiable information regarding that subscriber that is collected and maintained by a cable operator, satellite carrier, or distributor. Such information shall be made available to the subscriber at reasonable times and at a convenient place designated by such cable operator, satellite carrier, or distributor. A cable or satellite subscriber shall be provided reasonable opportunity to correct any error in such information.

''(e) DESTRUCTION OF INFORMATION.—A cable operator, satellite carrier, or distributor shall destroy personally identifiable information if the information is no longer necessary for the purpose for which it was collected and there are no pending requests or orders for access to such information under subsection (d) or pursuant to a court order.

''(f) RELIEF.—

''(1) IN GENERAL.—Any person aggrieved by any act of a cable operator, satellite carrier, or distributor in violation of this section may bring a civil action in a district court of the United States.

''(2) DAMAGES AND COSTS.—In any action brought under paragraph (1), the court may award a prevailing plaintiff—

''(A) actual damages but not less than liquidated damages computed at the rate of $100 a day for each day of violation or $1,000, whichever is greater;

''(B) punitive damages; and

''(C) reasonable attorneys' fees and other litigation costs reasonably incurred.

''(3) NO EFFECT ON OTHER REMEDIES.—The remedy provided by this subsection shall be in addition to any other remedy available under any provision of law to a cable or satellite subscriber.

''(g) DEFINITIONS.—In this section:

''(1) DISTRIBUTOR.—The term 'distributor' has the meaning given that term in section 119(d)(1) of title 17, United States Code.

''(2) CABLE OPERATOR.—

''(A) IN GENERAL.—The term 'cable operator' has the meaning given that term in section 602.

''(B) INCLUSION.—The term includes any person who—

''(i) is owned or controlled by, or under common ownership or control with, a cable operator; and

''(ii) provides any wire or radio communications service.

''(3) OTHER SERVICE.—The term 'other service' includes any wire, electronic, or radio communications service provided using any of the facilities of a cable operator, satellite carrier, or distributor that are used in the provision of cable service or satellite home viewing service.

''(4) PERSONALLY IDENTIFIABLE INFORMATION.—The term 'personally identifiable information' does not include any record of aggregate data that does not identify particular persons.

''(5) SATELLITE CARRIER.—The term 'satellite carrier' has the meaning given that term in section 119(d)(6) of title 17, United States Code.''.

(b) NOTICE WITH RESPECT TO CERTAIN AGREEMENTS.—

(1) IN GENERAL.—Except as provided in paragraph (2), a cable operator, satellite carrier, or distributor who has entered into agreements referred to in section 631(a) of the Communications Act of 1934, as amended by subsection (a), before the date of enactment of this Act, shall provide any notice required under that section, as so amended, to subscribers under such agreements not later than 180 days after that date.

(2) EXCEPTION.—Paragraph (1) shall not apply with respect to any agreement under which a cable operator, satellite carrier, or distributor was providing notice under section 631(a) of the Communications Act of 1934, as in effect on the day before the date of enactment of this Act, as of such date.

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SECTION-BY-SECTION ANALYSIS OF LEAHY E-RIGHTS ACT

SEC. 1. SHORT TITLE.—The Act may be cited as the ''Electronic Rights (E-RIGHTS) for the 21st Century Act.''

SEC. 2. PURPOSES.—The Act has three general purposes: (1) promoting the privacy and constitutional rights of individuals and organizations in networked computer systems, and the security of critical information infrastructures, while properly balancing law enforcement access needs; (2) encouraging Americans to develop and deploy encryption technology and to promote the use of encryption by Americans to protect the security, confidentiality and privacy of their lawful wire and electronic communications and stored electronic information; and (3) establishing privacy standards and procedures for law enforcement officers to obtain decryption assistance for encrypted communications and information.

SEC. 3. FINDINGS.—The Act enumerates twenty congressional findings that law enforcement investigative and electronic surveillance needs must be balanced with the right to privacy and other rights protected under the Fourth Amendment of the Constitution; encryption technology, which is widely available worldwide, is useful in protecting the privacy, security, and confidentiality of the national and global information infrastructure; Americans should be free to use, and American businesses free to compete and sell, encryption technology, programs and products; and given the convergence among digital media, privacy safeguards should be applied more uniformly to provide a level competitive playing field.

SEC. 4. DEFINITIONS.—The terms ''agency'', ''person'' and ''state'' have the same meaning given those terms in specified sections of title 18, United States Code, except that the term ''agency'' also includes the United States Postal Service.

Additional definitions are provided for the following terms:

The terms ''encrypt'' and ''encryption'' mean the use of mathematical formulas or algorithms to scramble or unscramble electronic data or communications for purposes of confidentiality, integrity, or authenticity. As defined, the terms cover a broad range of scrambling techniques and applications including cryptographic applications such as PGP or RSA's encryption algorithms; steganography; authentication; and winnowing and chafing.

The term ''encryption product'' includes any hardware, software, devices, or other technology with encryption capabilities, whether or not offered for sale or distribution.

The term ''key'' means the variable information used in or produced by a mathematical formula to encrypt or decrypt wire or electronic communications or electronically stored information.

The term ''United States person'' means any citizen of the United States or legal entity organized under U.S. law that has its principal place of business in this country.

TITLE I—PRIVACY PROTECTION FOR COMMUNICATIONS AND ELECTRONIC INFORMATION

SEC. 101. ENHANCED PRIVACY PROTECTION FOR INFORMATION ON COMPUTER NETWORKS.—The Act modifies subsection (b) of section 2703 of title 18, United States Code, to extend privacy protections to electronic information stored on computer networks.

When held in a person's home, records may only be seized pursuant to a warrant based upon probable cause, or compelled under a subpoena, which may be challenged and quashed. In both instances, the record owner has notice of the search and an opportunity to challenge it. By contrast, under United States v. Miller, 425 U.S. 435 (1976) (customer has no standing to object to bank disclosure of customer records), and its progeny, records in the possession of third parties do not receive Fourth Amendment protection. A governmental agent with a subpoena based upon mere relevance may compel a third party to produce records originating with or belonging to another person, without notice to the person to whom the records pertain. The record subject may never receive notice or any meaningful opportunity to challenge the production.

This lack of protection for records held by third parties presents new privacy problems in the information age. With the rise of network computing, electronic information that was previously held on a person's own computer is increasingly stored elsewhere, such as on a network server. In many cases the location of such information is not even known to the record's owner.

Furthermore, Web-based information services are attracting customers by offering free storage and services accessible from any computer. Companies like When.com, Briefcase.com, Yahoo and Netscape offer calendars, address books, ''to do'' lists, stock portfolios and storage space, while more targeted companies, like dietwatch.com let users keep track of their diets. Potential customers of such services should not be discouraged from subscribing due to the weaker privacy and confidentiality protections afforded their remotely stored records than if those records were stored on the customer's own laptop or PC.

Under current law, these services are covered by the remote computing service provision in 18 U.S.C. §2703(b), which authorizes a governmental entity to require disclosure of those communications without notice to the subscriber. A remote computing service provides storage or computer processing services to customers and is not authorized to access the contents of the electronic communications created by the customer.

The Act amends section 2703(b) to extend the same privacy protections to a person's records whether storage takes place on that person's personal computer in their possession or in networked electronic storage. The amendment to section 2703(b) would authorize a governmental entity to require disclosure of electronic communications or records stored by a remote computing service pursuant to (i) a state or federal warrant (based upon probable cause), with a copy to be served on the customer or record owner at the same time the warrant is served on the remote computing service holding the record; or (ii) a subpoena that must also be served on the customer or record owner with a meaningful opportunity to challenge the subpoena.

The penalties for violating this section would not change and do not currently carry criminal fines or any term of imprisonment. (See 18 U.S.C. §2701(c) (criminal offense provision does not apply to ''conduct authorized . . . in section 2703''). Instead, under 18 U.S.C. §2707, a government agent that violates this section is subject to disciplinary action, and a service provider that violates this section is subject to civil action for appropriate relief.

SEC. 102. GOVERNMENT ACCESS TO LOCATION INFORMATION.—The Act adds a new subsection (g) to section 2703 of title 18, United States Code, to extend privacy protections for physical location information generated on a real time basis by mobile electronic communications services, such as cellular telephones. This section requires that physical location information generated by a wireless service provider may only be released to a governmental entity pursuant to a court order based upon probable cause.

Location information on wireless telephones is fundamentally different from the type of location information that can be associated with a wireline telephone. Wireless telephones are normally directly associated with the physical presence of the individual user, and are carried by those users into places where there is a reasonable expectation of privacy. Tracking of cellular telephones, even more-so than automobiles, implicates the movements of a person going about his or her business and personal life.

Should the government seek to track a person by surreptitiously placing a mobile tracking device on that person's automobile, a court order would be required based upon a finding of probable cause. (See 18 U.S.C. §3117; Fed. R. Cr. P. 41; *U.S.* v. *In re Application*, 155 F.R.D. 401, 402 (D. MA 1994)). No less should be required for use by the government of a wireless telephone as a tracking device.

Civil liberties experts have noted that cellular telephone technology ''is proceeding in the direction of providing more precise location information, a trend that has been boosted by the rulings of the Federal Communications Commission (FCC) in its ''E911'' (Enhanced 911) proceeding, which requires service providers to develop a locator capability for medical emergency and rescue purposes.'' (Testimony of Deirdre Mulligan, Center for Democracy and Technology, before the House Committee on the Judiciary, Subcommittee on Courts and Intellectual Property, March 26, 1998). Specifically, the FCC is requiring wireless service providers to modify their systems to enable them to relay to public safety authorities the cell site location of 911 callers. Carriers must also take steps to deploy the capability to provide latitude and longitude information of wireless telephone callers within 125 meters and, ultimately, to locate a caller within a 40-foot radius for longitude, latitude and altitude, to enable locating a caller within a tall building. (See In re Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Sys., CC Docket No. 94–102, Report and Order and Further Notice of Proposed Rulemaking (last modified Jan. 2, 1997)).

In a separate proceeding, the FCC in October 1998 proposed ruling that a location tracking capability for wireless telephones was required under the Communications Assistance for Law Enforcement Act (CALEA). The FCC has tentatively concluded that carriers must have the capability of providing to law enforcement a caller's cell site location at the beginning and termination of a call. (See In re CALEA, CC Docket No. 97–213, Further Notice of Proposed Rulemaking (adopted October 22, 1998), 63 Fed. Reg. 63639, November 16, 1998). Whether this capability is ultimately required by the FCC as part of CALEA, there is no doubt that real-time location information will be increasingly available to law enforcement agencies. Accordingly, the appropriate standard for law enforcement access to such location information should be clarified.

SEC. 103. ENHANCED PRIVACY PROTECTION FOR TRANSACTIONAL INFORMATION OBTAINED FROM PEN REGISTERS OR TRAP AND TRACE DEVICES.—The Act enhances privacy protections for information obtained from pen register and trap and trace devices by amending section 3123(a) of title 18, United States Code. Under current law, the court is relegated to a mere ministerial function and must issue a pen register or trap and trace order whenever presented with a signed certification of a prosecutor.

This amendment authorize the court to review the information presented in the certification to determine whether the information likely to be obtained is relevant to an ongoing criminal investigation. The amendment would not change the standard for issuance of an ex parte order authorizing use of a pen register or trap and trace device.

In addition, the amendment would require law enforcement to minimize the information obtained from the pen register or trap and trace device that is not related to the dialing and signaling information utilized in call processing.

Currently, pen registers capture not just such dialing information but also any other dialed digits after a call has been connected. The Department of Justice has taken the position in connection with legislation pending in the 105th Congress regarding law enforcement access to clone numeric pagers that digits dialed and transmitted after a call has been placed may consist of electronic impulses but ''are the 'contents' of the call,'' subject to more stringent privacy protections under the Fourth Amendment. This provision would provide protection for those ''contents.''

SEC. 104. PRIVACY PROTECTION FOR CONFERENCE CALLS.—This section clarifies the circumstances under which the government may continue monitoring a three-way call or conference call after a facility specified in the wiretap order is no longer connected to the call. The Fourth Amendment requires the government when conducting a search and seizure to have a warrant ''particularly describing the place to be searched, and the person or things to be seized.'' Under the terminology of the wiretap laws, the place to be searched is called a ''facility,'' which has generally been interpreted to mean a subscriber telephone line.

Modern three-way and conference calling technology allows an individual to initiate a three-way or conference call with two or more other parties and then to ''drop off'' the call while the other parties continue communicating. At that point, the telephone line specified in the order is no longer connected to the call. This section makes it clear that the government may continue monitoring the communications of parties remaining on a conference call when the facility identified in the wiretap order is no longer participating only if the government has shown and the authorizing judge has found that an individual who remains a party to the communication is committing, has committed or is about to commit a particular offense enumerated in the wiretap order and that communications concerning that offense will be obtained through the

continuing interception. Since these are the basic standards of the wiretap law, which the government must satisfy for any interception, the effect of the change is to make it clear that the interception of the remaining parties to a three-way or conference call must satisfy the basic requirements of the wiretap law.

SEC. 105. ENHANCED PRIVACY PROTECTION FOR PACKET NETWORKS, INCLUDING THE INTERNET.—This section amends subsection 3121(c) of title 18 to require law enforcement agencies conducting pen register or trap and trace investigations on packet communications to use reasonably available technology to ensure that they do not intercept the content of communications without a Title III order. The electronic surveillance laws draw a distinction between the interception of content, which requires a court order based on the high probable cause standard, and the interception of call routing information, which is obtained under the lower pen register or trap and trace authority in sections 3121–3127. The Communications Assistance for Law Enforcement Act of 1994 requires carriers, to the extent reasonably achievable, to design their systems to ensure that law enforcement agencies conducting pen register and trap and trace investigations do not intercept the content of communications. Subsection 3121(c), originally added by CALEA, imposed a mirror obligation on law enforcement to use pen register or trap and trace equipment that does not record or decode content.

Sec. 105 amends 3121(c) to make it clear that obligation applies to packet switched communications, which are based on technology that breaks a digital message into many small packets, each consisting of addressing or routing information plus a segment of content. This change makes it clear that law enforcement agencies using pen registers or trap and trace devices in packet switched environments must, if the technology is reasonably available, record or decode only addressing information, not content.

SEC. 106. PRIVACY SAFEGUARDS FOR INFORMATION COLLECTED BY INTERNET REGISTRARS.—The Act would amend section 2703 of title 18, United States Code, to add a new subsection (g) protecting the privacy of records pertaining to persons who register for a second-level domain name, which serves as an Internet address. Just as consumers may, by obtaining an unlisted telephone number for privacy, safety or other reasons, keep confidential personally identifiable information associated with telephone numbers, such as name and address, Internet users should be able to get an ''unlisted'' Internet address. A domain name registration service provider that violates this section would be subject to civil action for appropriate relief, under 18 U.S.C. §2707.

Internet domain names are the unique identifiers or addresses that enables businesses, organizations, and individuals to communicate and conduct commerce on the Internet.

Until recently, pursuant to a cooperative agreement with the Department of Commerce, Network Solutions, Inc. (NSI), was the exclusive registrar assigning domain names ending in .com, .net, .org and .edu. As a registrar, NSI enters new domain names into the master directory or registry.

The U.S. government is in the process of privatizing the administration of the Internet domain name system (DNS) to increase competition in the registration of domain names. With the advent of competition in the DNS, NSI will continue to operate the .com, .net, .org registries, but other companies, including domain name registration resellers, country code registries, ISPs, and major telecommunications firms, may be able to offer competing registrar services or registry/registrar services using other top level domains.

Normally, in order to process a request for a domain name, registrars and registries must collect personal information for billing and other purposes. The information currently collected by NSI includes: name, organization, address, country, contacts for administrative, technical and billing matters, telephone and fax numbers, and e-mail address. This information, along with the date on which the name was registered and information on the computer network used by the registrant to connect to the Internet, is compiled in a registry and made publicly available on an Internet-accessible ''WHOIS'' database.

This database provides an efficient way of identifying and contacting persons operating Web sites for both legitimate or illegitimate purposes, such as online trademark and copyright infringement. The personally identifiable information placed on the WHOIS database has been misused for ''spamming'', or sending unsolicited and unwanted e-mail messages to the persons who are registered with domain names. In addition, this information has been used by ''cyber-squatters'' to appropriate domain names for resale to the rightful owners. Despite these misuses and abuses of the WHOIS database, this information is valuable to marketers, news organizations, governments, and intellectual property owners.

Personally identifiable information collected by domain name registrars has privacy implications. For example, when human rights organizations obtain a domain name to use the Internet for political activities, disclosure of the required mailing and contact information may be dangerous. The importance of anonymity is amply demonstrated by the recent example of people in Kosovo, who are using anonymous remail services to try to maintain confidential communications and avoid detection by Serbian forces. (See New York Times, at C4, April 19, 1998). As one civil liberties organization has said, ''Internet users should not have to sacrifice their privacy and personal safety to exercise their right to free speech and expression.''

The amendment seeks to balance these competing interests by setting procedures for access to personally identifiable information regarding domain name holders. The procedures allow continued public access to information identifying the service provider hosting the website of the subscriber or customer, and are consistent with procedures adopted by the Congress in the Digital Millennium Copyright Act (DMCA), P.L. 105–304, 112 STAT. 2883 (1998), which authorizes copyright owners to obtain information identifying the operators of Web sites or other Internet addresses engaged in possible copyright infringements through use of an expedited subpoena process. The DMCA provides that copyright owners ''may request a clerk of any U.S. district court to issue a subpoena to a service provider for identification of an alleged infringer.'' 17 U.S.C. § 512(h)(1).

SEC. 107. REPORTS CONCERNING GOVERNMENTAL ACCESS TO ELECTRONIC COMMUNICATIONS.—This section requires the Attorney General to provide to Congress annual reports on the number and nature of government interceptions of E-mail and other electronic communications. To provide the appropriate oversight, the Congress, other policy makers and the public need information about government practices under the law. While the wiretap provisions of Title III require detailed reports by the courts and prosecutors on the number of wiretap orders issued, there is no similar requirement for collecting and publishing information on the nature and extent of government access to E-mail and other electronic communications under section 2703. Section 107 corrects this deficiency by requiring the Attorney General to transmit to Congress on an annual basis a report on the warrants, court orders and subpoenas applied for and issued under section 2703.

SEC. 108. ROVING WIRETAPS.—This section amends subsection (11)(b) of section 2518 of title 18, United States Code, concerning the standard for issuance of a roving wiretap. This standard was modified without debate or hearing in the Intelligence Authorization Act for Fiscal Year 1999, P.L. 105–272, that passed in the final days of the 105th Congress, to address the concern of the Department of Justice that the prior standard for roving taps was too difficult to meet because it required the government to demonstrate that the subjective intent of the target was to avoid surveillance. However, the modification eliminated virtually any standard at all.

This section would amend the roving wiretap provision by preserving the central rationale for roving taps: that they are only appropriate where the subject is changing facilities in a way that thwarts interception. As amended by this section, (b)(i) does not require the government to prove intent; it only requires the government to show effect. Alternatively, under (b)(ii), the government can obtain a roving tap where it can show the intent of the target, e.g., where an associate of the target informs the government that the target intends to evade surveillance by changing facilities.

SEC. 109. AUTHORITY TO PROVIDE CUSTOMER LOCATION INFORMATION FOR EMERGENCY PURPOSES.—This section amends section 222 of the Communications Act of 1934 (47 U.S.C. 222) to authorize telecommunications carriers to: (1) provide call location information concerning the user of a commercial mobile service to providers of emergency services, to inform such user's legal guardian or family members of the user's location in an emergency situation involving the risk of death or serious bodily injury, or to providers of information services to assist in the delivery of emergency response services; and (2) transmit automatic crash notification system information as part of the operation of such a system. In addition, this amendment requires the express prior customer authorization of the use of either of the above information for other than the stated purposes.

Finally, the amendment requires a telecommunications carrier that provides telephone exchange service to provide subscriber list information (including information on unlisted subscribers) that is in its sole possession or control to providers of emergency services and emergency support services for use solely in delivering, or assisting in delivering, emergency services.

This provision was included by Representative Markey (D-MA) to the ''Wireless Communications and Public Safety Act of 1999,'' H.R. 438, which passed the House on February 23, 1999.

SEC. 110. CONFIDENTIALITY OF SUBSCRIBER INFORMATION.—This section amends section 2703(c) of title 18, United States Code, to protect the confidentiality of information provided to and collected by electronic communication and remote computing services about their subscribers. Under current law, these service providers may disclose a record or other information pertaining to a subscriber or customer to any person other than a governmental entity.

By contrast, cable operators may not release to any person, including the government, ''personally identifiable information''

about a customer'' without the prior written or electronic consent of the subscriber concerned and shall take such actions as are necessary to prevent unauthorized access to such information by a person other than the subscriber or cable operator.'' 47 U.S.C. § 551(c)(1). Similarly, telecommunications carriers are generally barred from using, disclosing or permitting access to individually identifiable customer proprietary network information, such as the services used and billing information, except ''with the approval of the customer.'' 47 U.S.C. § 222(c)(1). Telecommunications carriers are now offering online and Internet access services. In addition, digital convergence is allowing cable operators to provide Internet services. These developments only highlight the disparities in the privacy regimes applicable to different providers.

This section would authorize providers of electronic communication and remote computing services to disclose records or information pertaining to their subscribers or customers only if such disclosure is: (1) necessary in connection with rendering services; (2) necessary to protect the rights or property of the provider; (3) required by law; (4) requested by the subscriber; or (5) if the provider has provided the subscriber with the opportunity in a clear and conspicuous manner, to prohibit such disclosure. In addition, providers of electronic communication and remote computing services are authorized to use aggregate subscriber information from which individual subscriber identities have been removed in any manner they wish.

TITLE II—PROMOTING THE USE OF ENCRYPTION

SEC. 201. FREEDOM TO USE ENCRYPTION.

(A) NO DOMESTIC ENCRYPTION CONTROLS.—The Act legislatively confirms current practice in the United States that any person in this country may lawfully use any encryption method, regardless of encryption algorithm, key length, existence of key recovery or other plaintext access capability, or implementation selected. Specifically, the Act states the freedom of any person in the U.S., as well as U.S. persons in a foreign country, to make, use, import, and distribute any encryption product without regard to its strength or the use of key recovery, subject to the other provisions of the Act.

(B) PROHIBITION ON GOVERNMENT-COMPELLED KEY ESCROW OR KEY RECOVERY ENCRYPTION.—The Act prohibits any federal or state agency from compelling the use of key recovery systems or other plaintext access systems. Agencies may not set standards, or condition approval or benefits, to compel use of these systems. U.S. agencies may not require persons to use particular key recovery products for interaction with the government. These prohibitions do not apply to systems for use solely for the internal operations and telecommunications systems of a U.S. or a State government agency.

(C) USE OF ENCRYPTION FOR AUTHENTICATION OR INTEGRITY PURPOSES.—The Act requires that the use of encryption products shall be voluntary and that no federal or state agency may link the use of encryption for authentication or identity (such as through certificate authority and digital signature systems) to the use of encryption for confidentiality purposes. For example, conditioning receipt of a digital certificate from a licensed certificate authority on the use of key recovery would be prohibited.

SEC. 202. PURCHASE AND USE OF ENCRYPTION PRODUCTS BY THE FEDERAL GOVERNMENT.—The Act authorizes agencies of the United States to purchase encryption products for internal governmental operations and telecommunications systems. To ensure that secure electronic access to the Government is available to persons outside of and not operating under contract with Federal agencies, the Act requires that any key recovery features in encryption products used by the Government interoperate with commercial encryption products.

SEC. 203. LAW ENFORCEMENT DECRYPTION ASSISTANCE.—The Act adds a new chapter 124 to Title 18, Part I, governing the procedures for governmental access, including by foreign governments, to decryption assistance from third parties.

(a) IN GENERAL.—New chapter 124 has four sections. This chapter applies to wire or electronic communications and communications in electronic storage, as defined in 18 U.S.C. § 2510, and to stored electronic data. It proscribes procedures for law enforcement to obtain assistance in decrypting encrypted electronic mail messages, encrypted telephone conversations, encrypted facsimile transmissions, encrypted computer transmissions and encrypted file transfers over the Internet that are lawfully intercepted pursuant to a wiretap order, under 18 U.S.C. § 2518, or obtained pursuant to lawful process, under 18 U.S.C. § 2703, and encrypted information stored on computers that are seized pursuant to a search warrant or other lawful process.

§ 2801. Definitions. Generally, the terms used in the new chapter have the same meanings as in the federal wiretap statute, 18 U.S.C. § 2510. Definitions are provided for ''decryption assistance'', ''decryption key'', ''encrypt; encryption'', ''foreign government'' and ''official request''.

§ 2802. Access to decryption assistance for communications. In the United States today, decryption keys and other decryption assistance held by third parties constitute third party records and may be disclosed to a governmental entity with a subpoena or an administrative request, and without any notice to the owner of the encrypted data. Such a low standard of access creates new problems in the information age because encryption users rely heavily on the integrity of keys to protect personal information or sensitive trade secrets, even when those keys are placed in the hands of trusted agents for recovery purposes.

Under new section 2802, in criminal investigations a third party holding decryption keys or other decryption assistance for wire or electronic communications may be required to release such assistance pursuant to a court order, if the court issuing the order finds that such assistance is needed for the decryption of communications covered by the order. Specifically, such an order for decryption assistance may be issued upon a finding that the key or assistance is necessary to decrypt communications or stored data lawfully intercepted or seized. The standard for release of the key or provision of decryption assistance is tied directly to the problem at hand: the need to decrypt a message or information that the government is otherwise authorized to intercept or obtain.

This will ensure that third parties holding decryption keys or decryption information need respond to only one type of compulsory process—a court order. Moreover, this Act will set a single standard for law enforcement, removing any extra burden on law enforcement to demonstrate, for example, probable cause for two separate orders (i.e., for the encrypted communications or information and for decryption assistance) and possibly before two different judges (i.e., the judge issuing the order for the encrypted communications or information and the judge issuing the order to the third party able to provide decryption assistance).

The Act reinforces the principle of minimization. The decryption assistance provided is limited to the minimum necessary to access the particular communications or information specified by court order. Under some key recovery schemes, release of a key holder's private key—rather than an individual session key—might provide the ability to decrypt every communication or stored file ever encrypted by a particular key owner, or by every user in an entire corporation, or by every user who was ever a customer of the key holder. The Act protects against such over broad releases of keys by requiring the court issuing the order to find that the decryption assistance being sought is necessary. Private keys may only be released if no other form of decryption assistance is available.

Notice of the assistance given will be included as part of the inventory provided to subjects of the interception pursuant to current wiretap law standards.

For foreign intelligence investigations, new section 2802 allows FISA orders to direct third-party holders to release decryption assistance if the court finds the assistance is needed to decrypt covered communications. Minimization is also required, though no notice is provided to the target of the investigation.

Under new section 2802, decryption assistance is only required from third-parties (i.e., other than those whose communications are the subject of interception), thereby avoiding self-incrimination problems.

Finally, new section 2802 generally prohibits any person from providing decryption assistance for another person's communications to a governmental entity, except pursuant to the orders described.

§ 2803. Access to decryption assistance for stored electronic communications or records. New section 2803 governs access to decryption assistance for stored electronic communications and records.

As noted above, under current law third party decryption assistance may be disclosed to a governmental entity with a subpoena or even a mere request and without notice. This standard is particularly problematic for stored encrypted data, which may exist in insecure media but rely on encryption to maintain security; in such cases easy access to keys destroys the encryption security so heavily relied upon.

Under new section 2803, third parties holding decryption keys or other decryption assistance for stored electronic communications may only release such assistance to a governmental entity pursuant to (1) a state or federal warrant (based upon probable cause), with a copy to be served on the record owner at the same time the warrant is served on the record holder; (2) a subpoena that must also be served on the record owner with a meaningful opportunity to challenge the subpoena; or (3) the consent of the record owner. This standard closely mirrors the protection that would be afforded to encryption keys that are actually kept in the possession of those whose records were encrypted. In the specific case of decryption assistance for communications stored incident to transit (such as e-mail), notice may be delayed under the standards laid out for delayed notice under current law in section 2705(a)(2) of title 18, United States Code.

§ 2804. Foreign government access to decryption assistance. New section 2804 creates standards for the U.S. government to provide decryption assistance to foreign governments. No law enforcement officer would be permitted to release decryption keys to a foreign government, but only to provide

decryption assistance in the form of producing plaintext. No officer would be permitted to provide decryption assistance except upon an order requested by the Attorney General or designee. Such an order could require the production of decryption keys or assistance to the Attorney General only if the court finds that (1) the assistance is necessary to decrypt data the foreign government is authorized to intercept under foreign law; (2) the foreign country's laws provide ''adequate protection against arbitrary interference with respect to privacy rights''; and (3) the assistance is sought for a criminal investigation of conduct that would violate U.S. criminal law if committed in the United States.

TITLE III—PRIVACY PROTECTION FOR LIBRARY AND BOOKSTORE RECORDS.

SEC. 301. WRONGFUL DISCLOSURE OF LIBRARY AND BOOKSTORE RECORDS.—The Act amends section 2710 of title 18, United States Code, to extend the privacy protections currently in place for video rental and sale records to library and book sale records, whether the transactions take place on-line or in a physical store.

Section 2710(a) is amended with definitions for the following new terms: (1) ''book seller'' means any person engaged in the business of selling books, magazines or other printed material; (2) ''library'' means an institution which operates as a public, university, college, or school library; and (3) ''patron'' means a person who requests or receives services within, or books or other materials on loan from, a library.

Section 2710(b) is amended by applying the same privacy safeguards that apply to video tape rental and sale records to book sale records. As amended, a book seller who knowingly discloses personally identifiable information about a consumer of such seller is liable to an aggrieved person in a civil action. A book seller is authorized to disclose such information: (1) to the consumer; (2) with the informed, written consent of the consumer; (3) to a law enforcement agency pursuant to a warrant or a court order based upon probable cause to believe a person is engaging in criminal activity and the records sought are material to the investigation of such activity; (4) to any person, if the disclosure is limited to the names and addresses of consumers and these consumers have been given the opportunity to prohibit such disclosure, which does not identify the subject matter of the material purchased or rented by the consumers; (5) to any person, if the disclosure is incident to the ordinary course of business; or (6) pursuant to a court order in a civil proceeding upon a showing of compelling need and if the consumer is given reasonable notice and an opportunity to appear and contest the claim of the person seeking disclosure.

A new section 2710(c) is added to address privacy protections for library records. This new subsection provides that a library which knowingly discloses personally identifiable information about a patron is liable to the aggrieved person in a civil action. A library is authorized to disclose such information: (1) to the patron; (2) with the informed, written consent of the patron; (3) to a law enforcement agency pursuant to a warrant or court order based upon probable cause to believe a person is engaging in criminal activity and the records sought are material to the investigation of such activity; (4) to any person, if the disclosure is limited to the names and addresses of patrons and the patrons have been given the opportunity to prohibit such disclosure, which does not identify the subject matter of the library services used by the patrons; (5) to any person, if the disclosure is necessary for the retrieval of overdue materials or the recoupment of compensation for damaged or lost library materials; or (6) pursuant to a court order in a civil proceeding upon a showing of compelling need and if the patron is given reasonable notice and an opportunity to appear and contest the claim of the person seeking disclosure.

TITLE IV—PRIVACY PROTECTION FOR SATELLITE HOME VIEWERS

SEC. 401. PRIVACY PROTECTION FOR SUBSCRIBERS OF SATELLITE SERVICES FOR PRIVATE HOME VIEWING.—This section amends section 631 of the Communications Act of 1934 (codified at 47 U.S.C. § 551), to extend the privacy protections currently in place for subscribers of cable service to subscribers of satellite home viewing services or other services offered by cable or satellite carriers or distributors.

In the Cable Communications Policy Act of 1984 (''Cable Act''), Congress established a nationwide standard for the privacy protection of cable subscribers. (See H.R. Rep. No. 98–934, at 76, reprinted in 1984 U.S.C.C.A.N. 4655, 4713). Since the Cable Act was adopted, an entirely new form of access to television has emerged—home satellite viewing—which is especially popular in areas not served by cable. Yet there is no statutory privacy protection for information collected by home satellite viewing services about their customers or subscribers. This title fills this gap by amending the privacy provisions of the Cable Act to cover home satellite viewing.

The amendments do not change the rules governing access to cable subscriber information. Instead, they merely rewrite section 631 to add the words ''satellite home viewing service'' and ''satellite carrier or distributor'' where appropriate.

The amendment does not address another inconsistency in the law, which bears mentioning: should a cable company that provides Internet services to its customers be subject to the privacy safeguards in the Cable Act or in the Electronic Communications Privacy (ECPA), which normally applies to Internet service providers and contains obligations regarding the disclosure of personally identifiable information to both governmental and nongovernmental entities different from those in the Cable Act? At least one court has noted the ''statutory riddle raised by the entrance of cable operators into the Internet services market,'' but declined ''to resolve such ephemeral puzzles.'' In re Application of the United States,— F.Supp.2d—, 1999 WL 74192 (D.Mass. Feb. 9, 1999).

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By Mr. LEAHY:

S. 855. A bill to clarify the applicable standards of professional conduct for attorneys for the Government, and other purposes; to the Committee on the Judiciary.

PROFESSIONAL STANDARDS FOR GOVERNMENT ATTORNEYS ACT OF 1999

Mr. LEAHY. Mr. President, I rise today to introduce legislation that would clarify the professional standards that apply to federal prosecutors and identify who has the authority to set those standards. These are two questions that have cried out for answers for years, and created enormous tension between the Justice Department and virtually everyone else.

The Citizen's Protection Act, which is also known as the ''McDade law,'' was passed last year to address these important questions. This new law was intended to make clear that a State — not the Attorney General— has the authority to make rules of conduct for attorneys practicing before courts of that State. Rather than resolve the long-standing tensions over this issue, the new law has only exacerbated them. At a hearing before a Judiciary Subcommittee last month, a number of law enforcement officials lined up to criticize the new law.

The Justice Department aggressively but unsuccessfully opposed passage of the McDade law last year in favor of continued reliance on controversial Justice Department regulations issued in 1994—regulations which allow contacts with represented persons and parties in certain circumstances, even if such contacts are at odds with state or local ethics rules.

Independent Counsel. The debate over the professional standards that apply to federal prosecutors comes at a time of heightened public concern over the high-profile investigations and prosecutions conducted by independent counsels. Special prosecutors Kenneth Starr and Donald Smaltz are the ''poster boys'' for unaccountable federal prosecutors. They even have their own Web sites to promote their work. By law, these special prosecutors are subject to the ethical guidelines and policies of the Department of Justice, and all of them claim to have conducted their investigations and prosecutions in conformity with Departmental policies. Yet, in practice, even the Department has conceded in its March 1999 responses to my written questions in connection with a July 1998 oversight hearing that ''in general, the Department avoids commenting in any way on how an independent counsel conducts his or her investigation.''

I am not alone in my concerns about the tactics of these special prosecutors and, specifically, requiring a mother to testify about her daughter's intimate relationships, requiring a bookstore to disclose all the books a person may have purchased, and breaching the longstanding understanding of the relationship of trust between the Secret Service and those it protects. I was appalled to hear a federal prosecutor excuse a flimsy prosecution by announcing after the defendant's acquittal that just getting the indictment was a great deterrent. Trophy watches and television talk show puffery should not be the trappings of prosecutors.

One of the core complaints the Justice Department has against the McDade law is that federal prosecutors would be subject to restrictive State ethics rules regarding contacts with represented persons. Yet a letter to The Washington Post from the former Chairman of the ABA ethics committee pointed out:

''[Anti-contact rules are] designed to protect individuals like Monica Lewinsky, who have hired counsel and are entitled to have all contacts with law enforcement officials go through their counsel. As Ms. Lewinsky learned, dealing directly with law enforcement officials can be intimidating and scary, despite the fact that those inquisitors later claimed it was okay for her to leave at any time.''

The McDade Law. This is not to say that the McDade law is the answer. This new law is not a model of clarity. It subjects federal prosecutors to the ''State laws and rules'' governing attorneys where the prosecutor engages in his or her duties. A broad reading of this provision would seem to turn the Supremacy Clause on its head. Does the reference to ''State laws'' mean that federal prosecutors must comply with state laws requiring the consent of all parties before a conversation is recorded, or state laws restricting the use of wiretaps? Furthermore, by referencing only the rules of the state in which the prosecutor is practicing, does the new law remove the traditional authority of a licensing state to discipline a prosecutor in favor of the state in which the prosecutor is

practicing? The new law subjects federal prosecutors not only to the laws and rules of the state in which the attorney is practicing, but also to ''local Federal court rules.'' What is a federal prosecutor supposed to do if the state rules and local federal court rules conflict? Finally, the new law does not address the possibility of a uniform federal rule or set of rules governing attorney conduct in and before the federal courts. Would this oversight inadvertently interfere with the Supreme Court's existing authority to prescribe such rules under the Rules Enabling Act?

These are all significant questions and the lack of clear answers is a significant source of the concern expressed by law enforcement over implementation of the McDade law.

S.250. At least one bill, the ''Federal Prosecutor Ethics Act,'' S.250, has been introduced to repeal the McDade law. This bill is a ''cure'' that could produce a whole new set of problems.

First, this bill would grant the Attorney General broad authority to issue regulations that would supersede any state ethics rules to the extent ''that [it] is inconsistent with Federal law or interferes with the effectuation of Federal law or policy, including the investigation of violations of federal law.'' I am skeptical about granting such broad rulemaking authority to the Attorney General for carte blanche self-regulation.

Moreover, any regulation the Attorney General may issue would generate substantial litigation over whether it is actually ''authorized''. For example, is a state rule requiring prosecutors to disclose exculpatory information to the grand jury ''inconsistent with'' federal law, which permits but does not require prosecutors to make such disclosures? More generally, must there be an actual conflict between the state rule and federal law or policy? Can the Attorney General create conflicts through declarations and clarifications of ''Federal policy''? Does a state rule ''interfere with'' the ''investigation of violations of Federal law'' merely by restricting what federal prosecutors may say or do, or is more required?

In addition to challenges concerning whether a Justice Department regulation was actually authorized, violations of the regulations would invite litigation over whether the remedy is dismissal of the indictment, exclusion of evidence or some other remedy.

Second, S.250 provides nine categories of ''prohibited conduct'' by Justice Department employees, violations of which may be punished by penalties established by the Attorney General. These prohibitions were initially proposed last year as a substitute for McDade's ten commandments, which were extremely problematic and, in the end, not enacted. With that fight already won, there is no useful purpose to be served by singling out a handful of ''prohibitions'' for special treatment, and it may create confusion. For example, one of the commandments prohibits Department of Justice employees from ''offer[ing] or provid[ing] sexual activities to any government witness or potential witness in exchange for or on account of his testimony.'' Does this mean that it is okay for government employees to provide sex for other reasons, say, in exchange for assistance on an investigation? Of course not, but that is the implication by including this unnecessary language.

Although the bill states that the nine ''commandments'' do not establish any substantive rights for defendants and may not be the basis for dismissing any charge or excluding evidence, they would invite defense referrals to the Department's Office of Professional Responsibility to punish discovery or other violations, no matter how minimal. In other words, these ''prohibitions'' and any regulations issued thereunder could provide a forum other than the court for a defendant to assert violations, particularly should defense arguments fail in court. This could be vexatious and harassing for federal prosecutors. The workload could also be overwhelming for OPR, since these sorts of issues arise in virtually every criminal case.

Two of the nine prohibitions are particularly problematic because they undermine the Tenth Circuit's recent en banc decision in United States v. Singleton that the federal bribery statute, 18 U.S.C § 201(c), does not apply to a federal prosecutor functioning within the official scope of his office. The court based its decision on the proposition that the word ''whoever'' in §201(c)—''Whoever . . . gives, offers, or promises anything of value to any person, for or because of [his] testimony'' shall be guilty of a crime—does not include the government. But the bill would expressly prohibit Department employees from altering evidence or attempting corruptly to influence a witness's testimony ''in violation of [18 U.S.C. §§ 1503 or 1512]''—the obstruction of justice and witness tampering statutes. These statutes use the same ''Whoever . . .'' formulation as §201(c). By providing that government attorneys are subject to §§ 1503 and 1512, the bill casts doubt on the Tenth Circuit's reasoning and may lead other courts to conclude that §201(c) does, indeed, apply to federal prosecutors, thereby reopening another can of worms.

Third, S.250 establishes a Commission composed of seven judges appointed by the Chief Justice to study whether there are specific federal prosecutorial duties that are ''incompatible'' with state ethics rules and to report back in one year. The new Commission's report is not due until nine months after the Attorney General is required to issue regulations. Thus, to the extent that the Commission is intended to legitimize the Attorney General's regulations exempting federal prosecutors from certain state ethics rules (by providing the record and basis for the exemption), its purpose is defeated by the timing of its report. In addition, the Commission's report must be submitted only to the Attorney General, who is under no obligation to adopt or even consider its recommendations in formulating her regulations.

For these reasons and others, S.250 is not the answer to resolving the disputes over who sets the professional standards for federal prosecutors and what those standards should be.

Professional Standards for Government Attorneys Act of 1999. The question of what professional standards govern federal prosecutors is only a small part of the broader question of what professional standards govern federal practitioners. The Justice Department has complained loudly about the difficulty in multi-district investigations of complying with the professional standards of more than one state. Yet, private practitioners must do so all the time. No area of local rulemaking has been more fragmented than the overlapping state, federal, and local court rules governing attorney conduct in federal courts.

The Judicial Conference of the United States has been studying this problem for some time. I sent a letter last month to the Chief Justice requesting information on when the Judicial Conference was likely to forward its final recommendations to Congress concerning rules governing attorney conduct in federal court. The Chief Justice responded:

The Judicial Conference Committee on Rules of Practice and Procedure has appointed an ad hoc subcommittee composed of two members each from the Advisory Committees on Appellate, Bankruptcy, Civil, Criminal, and Evidence Rules to make specific recommendations to their respective committees. The subcommittee meets on May 4, 1999, and will meet again later this summer in Washington, D.C. Consideration of any proposed amendments would proceed in accordance with the Rules Enabling Act rulemaking process. 28 U.S.C. §§ 2071–77. Under that process the subcommittee's recommendations are expected to be considered by the respective advisory rules committees at their fall 1999 meetings. The advisory committees' recommendations will in turn be acted on by the Committee on Rules of Practice and Procedure at its January 2000 meeting. If amendments to the Federal Rules of Practice and Procedure are approved, they would likely be published for public comment in August 2000.

Any ethics legislation dealing with the particular problem of federal prosecutors should be sensitive to the broader issues and not foreclose reasonable solutions to these issues on recommendation of the Judicial Conference.

Furthermore, while I respect this Attorney General and the government attorneys at the Department of Justice, I am not alone in my unease at granting the Department authority to regulate the conduct of federal prosecutors in any area the Attorney General may choose or whenever prosecutors confront federal court or State ethics rules with which they disagree.

Therefore, the bill I introduce today would make clear that, with respect to conduct in connection with any matter in or before a federal court or grand jury, attorneys employed by the federal Government are subject to the professional standards established by the rules and decisions of the relevant federal court. For other conduct, government attorneys are subject to the professional standards established by the States in which they are licensed to practice. Beyond this, and consistent with the Rules Enabling Act, this legislation would ask the Supreme Court to prescribe a uniform national rule for government attorneys relating to contacts with represented persons, taking into consideration the special needs and interests of the United States in investigating and prosecuting violations of Federal criminal and civil law.

How would this bill work in practice? It would, for the most part, simply codify existing practices and common-sense choice-of-law principles patterned on Rule 8.5(b) of the American Bar Association's (ABA) Model Rules of Professional Conduct. Consider as an example the three stages of a federal criminal prosecution. Under this legislation, a federal prosecutor who is handling an indicted case before a federal district court would be subject to the standards of attorney conduct established by the rules and decisions of that district court. A prosecutor who is conducting or preparing a federal grand jury presentation would be subject to the standards of the district court under whose authority the grand jury was impanelled. In other circumstances, where no court has clear supervisory authority over particular conduct, a prosecutor would be subject to the standards of the licensing State in which he or she principally practices.

Of course, every one of the 94 federal districts has its own local rules and its own body of judicial decisions interpreting those rules. Some districts have adopted their state's ethics standards; some have adopted

model standards developed by the ABA; some have taken other approaches. As I mentioned, the Judicial Conference has been studying this balkanization among federal court ethics standards, and it may soon recommend changes. Nothing in this bill would interfere with this process; rather, the bill simply makes clear that, in most circumstances, government attorneys are subject to local court rules and decisions, whatever they may be.

Nor would anything in this bill disturb the traditional authority of the state courts to discipline attorneys, including government attorneys, who are licensed to practice in their jurisdictions. The issue here is what standards apply, not who gets to enforce them.

The bill also makes clear that the Department of Justice does not have the authority it has long claimed to write its own ethics rules. This authority properly belongs with the federal courts, and that is where it would stay under this legislation. With one exception, where there is a demonstrated need for a uniform federal rule, the courts would retain their current authority to prescribe rules of professional conduct for the attorneys who practice before them.

It has become clear, in recent years, that effective federal law enforcement is impeded by the proliferation of local rules, and the resulting uncertainty, in the area of contacts with represented persons and parties. Rule 4.2 of the ABA's Model Rules and analogous rules adopted by state courts and bar associations place strict limits on when a lawyer may communicate with a person he knows to be represented by another lawyer. These ''no contact'' rules preserve fairness in the adversarial system and the integrity of the attorney-client relationship by protecting parties, potential parties and witnesses from lawyers who would exploit the disparity in legal skill between attorneys and lay people and damage the position of the represented person. Courts have given a wide variety of interpretations to these rules, however, creating uncertainty and confusion as to how they apply in criminal cases and to government attorneys. For example, courts have disagreed about whether these rules apply to federal prosecutor contacts with represented persons in non-custodial pre-indictment situations, in custodial pre-indictment situations, and in post-indictment situations involving the same or different matters underlying the charges.

We need to ensure that government attorneys can participate in traditionally accepted investigative techniques without undue fear of ethical sanctions arising from perceived violations of the ''no contact'' rule. Absent clear statutory authority to engage in communications with represented persons—when necessary and under limited circumstances carefully circumscribed by law—the government will be significantly hampered in its ability to detect and prosecute federal offenses.

The ''no contact'' rule has been a focus of controversy, study and debate for many years. Given the advanced stage of dialogue among the interested parties—the federal and state courts, the ABA, the Department of Justice, and others—I am confident that a satisfactory uniform federal rule governing contacts with represented persons by government attorneys can be developed, through the Rules Enabling Act, within the time frame established by this bill. Until then, government attorneys would be well advised to seek court approval before engaging in contacts with represented persons, at least in jurisdictions where the relevant standards are uncertain.

The problems posed to federal law enforcement investigations and prosecutions by the McDade law may be real, but resolving those problems in a constructive and fair manner will require thoughtfulness on all sides.

I ask unanimous consent that my full statement, the bill, and the sectional summary of the bill be included in the RECORD.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

S. 855

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION. 1. SHORT TITLE.**

This Act may be cited as the ''Professional Standards for Government Attorneys Act of 1999''.

**SEC. 2. PROFESSIONAL STANDARDS FOR ATTORNEYS FOR THE GOVERNMENT.**

(a) IN GENERAL.—Section 530B of title 28, United States Code, is amended to read as follows:

**''§ 530B. Professional standards for attorneys for the Government**

''(a) DEFINITIONS.—In this section—

''(1) the term 'attorney for the Government' means any attorney described in section 77.2 of part 77 of title 28 of the Code of Federal Regulations (as in effect on the date of enactment of the Professional Standards for Government Attorneys Act of 1999) and includes any independent counsel, or employee of such a counsel, appointed under chapter 40;

''(2) the term 'court' means any Federal, State, or local court or other adjudicatory body, including an administrative board or tribunal; and

''(3) the term 'State' means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

''(b) CHOICE OF LAW.—Subject to any uniform national rule prescribed by the Supreme Court under chapter 131, the standards of professional conduct governing an attorney for the Government shall be—

''(1) with respect to conduct in connection with a proceeding in or before a court, the standards established by the rules and decisions of that court;

''(2) with respect to conduct in connection with a pending or contemplated grand jury proceeding, the standards established by the rules and decisions of the court under whose authority the grand jury was impanelled;

''(3) with respect to all other conduct—

''(A) the standards established by the rules and decisions of the State in which the attorney is licensed to practice; or

''(B) if the attorney is licensed to practice in more than 1 State—

''(i) the standards established by the rules and decisions of the licensing State in which the attorney principally practices; or

''(ii) if the conduct has a predominant effect in another State in which the attorney is licensed to practice, the standards established by the rules and decisions of the licensing State so affected.

''(c) UNIFORM NATIONAL RULE.—(1) In order to encourage the Supreme Court to prescribe, under chapter 131, a uniform national rule governing attorneys for the Government with respect to communications with represented persons and parties, not later than 1 year after the date of enactment of the Professional Standards for Government Attorneys Act of 1999, the Judicial Conference of the United States shall submit to the Chief Justice of the United States a report, which shall include recommendations with respect to amending the Federal Rules of Civil and Criminal Procedure to provide for such a uniform national rule.

''(2) In developing the recommendations included in the report under paragraph (1), the Judicial Conference of the United States shall take into consideration, as appropriate—

''(A) the needs and circumstances of multiforum and multijurisdictional litigation;

''(B) the special needs and interests of the United States in investigating and prosecuting violations of Federal criminal and civil law; and

''(C) practices that are approved under Federal statutory or case law or that are otherwise consistent with traditional Federal law enforcement techniques.

''(d) RULE OF CONSTRUCTION.—Nothing in this section may be construed to abridge, enlarge, or modify the power of the Supreme Court or of any court established by an Act of Congress, under chapter 131 or any other provision of law, to prescribe standards of professional conduct for attorneys practicing in and before the Federal courts, including attorneys for the Government.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The analysis for chapter 31 of title 28, United States Code, is amended, in the item relating to section 530B, by striking ''Ethical'' and inserting ''Professional''.

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SUMMARY OF THE ''PROFESSIONAL STANDARDS FOR GOVERNMENT ATTORNEYS ACT OF 1999''

The Professional Standards for Federal Professional Ethics Act of 1999 would clarify the professional standards that apply to Government attorneys and identify who has the authority to set those standards. Consistent with the Rules Enabling Act, this legislation would further ask the Supreme Court to prescribe a uniform national rule for Government attorneys in an area that has created enormous tension between the Justice Department and virtually everyone else—contacts with represented persons and parties.

More specifically, this bill would substitute for the ''McDade law''—enacted at the end of the last Congress as part of the omnibus appropriations bill—a new 28 U.S.C. §530B governing professional standards for Government attorneys. The new section 530B consists of four subsections:

Subsection (a) defines the term ''attorney for the Government'' in the same manner as it is defined in the McDade law, by reference to existing Federal regulations. It also provides simple definitions for the terms ''court'' and ''State''.

Subsection (b) establishes a clear choice-of-law rule for Government attorneys with respect to standards of professional conduct. Modeled on Rule 8.5(b) of the ABA Model Rules of Professional Conduct, this subsection simply codifies existing practice: for conduct in connection with any matter in or before a court or grand jury, Government attorneys are subject to the professional standards established by the rules and decisions of the relevant court; for all other conduct, Government attorneys are subject to the professional standards established by rules and decisions of the States in which they are licensed to practice.

Because this subsection addresses what standards apply, not who gets to enforce them, nothing in this subsection would disturb the traditional authority of the State courts to discipline attorneys, including Government attorneys, who are licensed to practice in their jurisdictions.

Subsection (c) directs the Judicial Conference of the United States to submit to the Supreme Court a proposed uniform national rule governing the conduct of Government attorneys with respect to communications with represented persons and parties. The Judicial Conference is directed to take various law enforcement concerns into consideration when crafting a proposed rule, and to complete its work within one year.

Subsection (d) provides that nothing in the bill would interfere with the Federal courts' existing authority, under the Rules Enabling Act or any other provision of law, to prescribe standards of attorney conduct for Federal practitioners.

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By Mr. JEFFORDS (for himself, Mr. WARNER, and Mrs. HUTCHISON):

S. 856. A bill to provide greater options for District of Columbia students in higher education; to the Committee on Governmental Affairs.

EXPANDED OPTIONS IN HIGHER EDUCATION FOR DISTRICT OF COLUMBIA STUDENTS ACT OF 1999

● Mr. JEFFORDS. Mr. President, I am introducing today—along with Senators HUTCHISON and WARNER—the ''Expanded Options in Higher Education for District of Columbia Students Act of 1999.'' The purpose of this measure is to provide citizens of the District with a greater range of options in pursuing postsecondary education by having the Federal government offer support that, in other areas of the country, is provided by State governments.

Our legislation takes a three-pronged approach toward meeting this objective:

First, it offers a broader array of choices available to students who wish to attend public institutions of higher education by picking up the difference in cost between in-state and out-of-state tuition for DC residents who attend public postsecondary institutions in Maryland and Virginia.

Second, it provides additional support to the one public postsecondary education institution in the District, the University of the District of Columbia (UDC), by authorizing funds for the strengthening activities outlined in Part B of Title III of the Higher Education Act.

Third, it offers support to those students choosing to attend private institutions in the District and neighboring counties by providing grants of up to $2,000 to help defray tuition costs.

With respect to public postsecondary education, students exploring their options find they have a more limited set of choices than any other group of students in the country. A student in any of the 50 states who wishes to attend a public institution of higher education has a number of institutions among which to choose. That student can base his or her decision on considerations such as the size of the institution and the strengths of the various programs it offers. A student in the District of Columbia finds that only one public institution is available.

As a practical matter, the District cannot expand its boundaries, nor can it establish a system of public higher education that can offer the diversity of offerings available in the various states. Every State provides support for higher education from which their residents benefit through lower in-state tuition, while out-of-state residents pay a premium to attend. I believe it is appropriate for the Federal government to assume the role of the State, effectively pushing the boundaries to a point where District students are placed on an equal footing in terms of the public education choices available to them.

The legislation also makes additional support available to the District's public institution, UDC. Although UDC is a Historically Black College and University (HBCU), it has been precluded from obtaining the support made available to other HBCUs under Part B of Title III of the Higher Education Act. Part B funds are designed to enable institutions to strengthen their programs through activities such as acquisition of laboratory equipment, renovation and construction of instructional facilities, faculty exchanges, academic instruction, purchase of educational materials, tutoring, counseling, and student activities. The funds made available to UDC under my legislation are to be used for activities authorized under Part B.

Finally, the legislation recognizes that many District residents choose to attend one of the many private postsecondary institutions in the DC area. Many of these institutions have made extraordinary efforts to enable District residents to succeed in their pursuit of advanced education. A number of states have developed programs, such as the Virginia Tuition Assistance Grant (TAG), to assist students at private institutions in defraying costs. The program authorized in this bill is modeled after these initiatives.

An investment in education is one of the most important investments we as a society and we as individuals can make. There are boundless opportunities in the DC area for individuals with education and training beyond high school. DC residents should not be left behind in obtaining the capacity to take advantage of these opportunities.

There is a need at every level of the education system to improve the opportunities available to District students. Throughout my career in Congress, I have made support for education one of my top priorities, and I have regarded the education of DC students as being an important component of my efforts.

The legislation we are introducing today complements not only those programs such as ''Everybody Wins!'' and the Potomac Regional Education Partnership (PREP) with which I have been directly involved, but also the many other initiatives undertaken by individuals and institutions who work tirelessly to nurture the potential of the children of our Nation's capital. Members of the business community have recently launched a program known as the D.C. College Access Program (DC-CAP) which will offer both financial support for students pursuing postsecondary education and assistance to high school students to assure they are prepared to tackle the challenges of higher learning.

I am encouraged by the positive response which I have received in discussing this concept and which has greeted similar legislation put forward by Representative TOM DAVIS. I look forward to working with all my colleagues in advancing this proposal.

Mr. President, I ask that a summary of my legislation appear in the RECORD.

The material follows:

EXPANDED OPTIONS IN HIGHER EDUCATION FOR DISTRICT OF COLUMBIA STUDENTS ACT OF 1999—SUMMARY OF PROVISIONS

PUBLIC INSTITUTION TUITION PROVISIONS

The Secretary of Education is authorized to make payments to public institutions of higher education located in Maryland and Virginia to cover the difference between in-state and out-of-state tuition charged to residents of the District of Columbia attending those institutions. The legislation does not alter in any way the admissions policies or standards of those institutions.

Students eligible to participate in the program include DC residents who begin postsecondary study within 3 years of high school graduation (excluding periods of service in the military, Peace Corps, or national service programs) and who are pursuing a recognized educational credential on at lease a half-time basis.

Individuals who have already obtained an undergraduate baccalaureate degree or whose family income exceeds the level at which eligibility for the Hope Scholarship tax credit is set are not eligible to participate.

The program will be administered by the Secretary of Education, in consultation with the Mayor of the District of Columbia. The Secretary is authorized to delegate the administration of the program to another public or private entity if he determines it would be more efficient to do so. The Secretary will report annually to Congress regarding the operation of the program.

Funding of $20 million in fiscal year 2000 and ''such sums as may be necessary'' for each of the 5 succeeding fiscal years are authorized for the program.

UNIVERSITY OF THE DISTRICT OF COLUMBIA

Funding of $20 million in fiscal year 2000 and ''such sums as may be necessary'' for each of the 5 succeeding fiscal years authorized to enable UDC to carry out activities authorized under Part B of Title III of the Higher Education Act.

PRIVATE INSTITUTION PROVISIONS

The Secretary of Education is authorized to make awards of up to $2,000 per academic year on behalf of students to help defray tuition costs for attendance at private postsecondary education institutions.

The student eligibility requirements are identical to those provided for the public institution tuition program.

Private postsecondary education institutions which are eligible to participate in the program include non-profit institutions of higher education and degree-granting proprietary institutions which are located in the District of Columbia or in neighboring counties.

The program will be administered by the Secretary of Education, in consultation with the Mayor of the District of Columbia. The Secretary is authorized to delegate the administration of the program to another public or private entity if he determines it would be more efficient to do so.

Funding of $10 million in fiscal year 2000 and ''such sums as may be necessary'' for each of the 5 succeeding fiscal years are authorized for the program.●

● Mr. WARNER. Mr. President, I am pleased to join as an original cosponsor

of this important legislation offered by Senator JAMES JEFFORDS, Chairman of the Senate Committee on Health, Education, Labor and Pensions. Through this proposal, we seek to significantly expand post-secondary educational opportunities for high school graduates residing in the District of Columbia through the provision of financial aid to compensate for non-resident tuition rates at colleges and universities in Maryland and the Commonwealth of Virginia.

This legislation is comparable in many ways to the highly innovative bill put forth in the House of Representatives by Congressman TOM DAVIS of the 11th Congressional District of Virginia. Mr. DAVIS' bill, H.R. 974, is different in scope, with national rather than regional college access, but our intent is the same. District of Columbia high school students need a broader horizon of more affordable public colleges and universities.

We would assist those students who have been admitted on the basis of their own academic achievement, and once admitted, as an example, to George Mason University or James Madison University, the U.S. Department of Education would make funding available so that the student's net cost would be the same as that of an in-state resident. I want to stress that these students would not receive preference in anyway in the admissions procedure.

I believe this is an exciting concept for the youth of the nation's capital, and one which has already been embraced by a number of important local community figures who wish to further strengthen the program with private donations.

Mr. DAVIS' legislation is on a fast track in the House Government Reform Committee, and I understand that our bill will be referred to the Senate Committee on Government Affairs. I look forward to working with our Senate Chairman FRED THOMPSON, our D.C. Subcommittee Chairman GEORGE VOINOVICH, as well as D.C. Appropriations Chairman KAY BAILEY HUTCHISON as we work our way through the legislative process.

I believe if we can all keep our focus on the common goal of improving college access for D.C. students, our local youth will turn up winners. I commend Senator JEFFORDS and Congressman DAVIS for their leadership in this endeavor, and I look forward to a healthy and productive debate as we hammer out the final form of the legislation.●

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By Ms. SNOWE (for herself, Mr. SARBANES, Mr. CONRAD, Mr. ASHCROFT, Mr. HUTCHINSON, Mr. GREGG, Mr. WELLSTONE, Mr. SCHUMER, Mr. WARNER, Mr. LUGAR, Mr. HAGEL, Mr. CRAPO, Mrs. MURRAY, Mr. BIDEN, Mr. FEINGOLD, Ms. COLLINS, Mr. DEWINE, and Mr. MCCAIN):

S.J. Res. 21. A joint resolution to designate September 29, 1999, as ''Veterans of Foreign Wars of the United States Day''; to the Committee on the Judiciary.

VETERANS OF FOREIGN WARS OF THE UNITED STATES DAY

Ms. SNOWE. Mr. President, I rise today to introduce a joint resolution honoring the Veterans of Foreign Wars (VFW) of the United States.

This resolution designates September 29, 1999, as Veterans of Foreign Wars of the United States Day, and urges the President to issue a proclamation in observance of this important day. September 29, 1999 marks the centennial of the VFW. As veterans of the Spanish American War and the Philippine Insurrection of 1899 and the China Relief Expedition of 1900 returned home, they drew together in order to preserve the ties of comradeship forged in service to their country, forming what we know today as the VFW.

Mr. President, when many of us think about war veterans, we think about the tremendous sacrifices these defenders of freedom made to safeguard the democracy we cherish, especially those who made the ultimate sacrifice. My resolution recognizes those contributions and sacrifices. It also recognizes the contributions that VFW members continue to make day-in and day-out in our communities—the youth activities and scholarships programs, the Special Olympics, homeless assistance initiatives, efforts to reach out to fellow veterans in need, national leadership on issues of importance to veterans and all Americans, and others too numerous to mention. Over the last 100 years, members of the VFW have contributed greatly to our nation both in and out of uniform in many ways.

I have nothing but the utmost respect for those who have served their country. This is an opportunity to honor the men and women and their families who have served this country with courage, honor and distinction. They answered the call to duty when their country needed them, and this is a small token of our appreciation.

The centennial of the founding of the VFW presents all Americans with an opportunity to honor and pay tribute to the more than two million active members of the VFW and to all veterans, as well as to the ideals for which many made the ultimate sacrifice. I urge my colleagues to join me in a strong show of support and an expression of appreciation for the VFW and all veterans.

Mr. President, I yield the floor.

Mr. BIDEN. Mr. President, I am proud to join today with my colleague, the Senator from Maine, Mrs. SNOWE, in introducing a resolution honoring the Veterans of Foreign Wars (VFW) of the United States and commemorating the 100th Anniversary of the founding of the VFW, by declaring September 29, 1999 as Veterans of Foreign Wars of the United States Day.

Since its inception after the Spanish-American War in 1899, the VFW has dedicated itself and its members to improving twentieth century America. The value of the contributions that members of the VFW and its Ladies Auxiliary have made to their communities and to this nation cannot be overstated. After returning home from foreign service during times of war and armed conflict, these men and women have continued to give of themselves to ensure that this nation protects and maintains the democratic ideals upon which it was founded, and that the veterans and their dependents are cared for. From providing services for veterans and their families, to sponsoring community action and charity projects, the VFW strengthens not only its members, but each and every American as well.

On a personal note, I have had the unique pleasure of sharing the floor of the United States Senate with several decorated veterans, as well as enjoying the privilege of having several veterans of American conflicts on my own staff. I've also enjoyed the ongoing opportunity of meeting and working with the very patriotic citizens of Delaware whom this resolution honors. Throughout my entire tenure in the United States Senate, the members of Delaware's VFW have been, for me, a continued source of knowledge, insight, and inspiration.

Particularly with the members of our armed forces currently serving in the Balkans in mind, whom I just visited, I offer my humble recognition to all of those who have so bravely and selflessly served America in the past. I sincerely trust that my colleagues will join me in acknowledging the courage, the sacrifice, and, frequently, the sheer bravery of our members of the Veterans of Foreign Wars, whose contributions to this country will be reaped for generations to come. I want to both demonstrate and convey to them my profound gratitude.

## ADDITIONAL COSPONSORS

S. 13

At the request of Mr. SESSIONS, the name of the Senator from Washington (Mr. GORTON) was added as a cosponsor of S. 13, a bill to amend the Internal Revenue Code of 1986 to provide additional tax incentives for education.

S. 14

At the request of Mr. GRAMM, his name was added as a cosponsor of S. 14, a bill to amend the Internal Revenue Code of 1986 to expand the use of education individual retirement accounts, and for other purposes.

S. 39

At the request of Mr. STEVENS, the names of the Senator from Georgia (Mr. COVERDELL), the Senator from Delaware (Mr. ROTH), and the Senator from New Mexico (Mr. BINGAMAN) were added as cosponsors of S. 39, a bill to provide a national medal for public safety officers who act with extraordinary valor above the call of duty, and for other purposes.